



Advanced Sexual Misconduct Track

2020

July 20 – 24, 2020

Virtual Classroom



Advance Sexual Misconduct Track

Gehring Academy

July 2020

Workbook

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Faculty



Kristen Harrell, PhD (Track Coordinator) - currently serves as an Associate Director in the Offices of the Dean of Student Life at Texas A&M University in College Station. Dr. Harrell's responsibilities include supervision of the Student Conduct Office, GLBT Resource Center, and Women's Resource Center. Dr. Harrell holds a Bachelor of Science Degree in Psychology from the University of Washington, a Master of Science Degree in Student Affairs in Higher Education from Colorado State University, and a Doctor of Philosophy in Higher Education Administration from Texas A&M University. Dr. Harrell's dissertation was titled Nonverbal Indicators of Sexual Consent in College Students. Dr. Harrell was awarded the Dissertation of the Year by ASCA in 2019. Dr. Harrell's involvement in ASCA has included participation and chairing of the awards committee. In 2018, Dr. Harrell served as the coordinator and a faculty member for the Advanced Sexual Misconduct Track at the Gehring Academy in Indianapolis, IN. During Dr. Harrell's 20 years as a Student Affairs Professional, she has worked in residence life, conduct, and alcohol and other drug prevention. Dr. Harrell has supervised numerous functional areas including an interpersonal violence prevention unit as well as an office that responds to student crisis. On the Texas A&M University campus, Dr. Harrell chairs the Sexual Assault Survivors Services committee composed of university and community stakeholders. As a part of this committee, Dr. Harrell led the curriculum development of a workshop designed to train students, faculty, and staff on how to have trauma-informed conversations with individuals who disclosed traumatic experiences. Dr. Harrell, in collaboration with others who participated in the curriculum development, presented on this workshop at the NASPA Strategies Conference. Dr. Harrell is often consulted on policy and legislative concerns, particularly as they apply to sexual misconduct issues. Dr. Harrell has authored and consulted on code revisions, including sexual misconduct codes. Dr. Harrell has spoken on sexual misconduct issues and hazing as an interpersonal violence issue on multiple occasions at conferences and on webinars.



Brandon Williams - has been an active member of ASCA for 12 years. In 2011 he served as a State Representative for Kentucky and from 2013 until 2017 served on the Finance Committee. In 2019, Brandon was a faculty member at Gehring for the Assistant Director/Mid-Level track. He is currently an Equal Opportunity Investigator and Deputy Title IX Coordinator at the University of Kentucky. This role includes training the University community on harassment, discrimination, and sexual misconduct. Additionally, Brandon investigates allegations of harassment, discrimination, and sexual misconduct under Title VI, Title VII, and Title IX as well as working with the Title IX Coordinator to ensure the University is compliant with all aspects of Title IX. Prior to working at the University of Kentucky, Brandon served as the Associate Dean of Students and the Title IX Coordinator at Kentucky State University, an HBCU in Frankfort, KY. In this role he oversaw all operations of residence life and student conduct. He chaired the committees to revise the Student Code of Conduct and Title IX Policy as well as serving on the Behavioral Intervention Team and the President's Forum. Previously, he was the Assistant Director of Student Conduct as well as the Deputy Title IX Coordinator at Eastern Kentucky University where he revised the student code of conduct, the Title IX policy, trained hearing boards, and oversaw the student judicial committees. Brandon received his Bachelor of Arts in Spanish and his Master of Public Administration from Eastern Kentucky University.



Mikiba W. Morehead is a Student Affairs professional and Student Conduct practitioner specialized in the areas of Title IX, crisis management, and student advocacy. Mikiba has served as the Director of Student Disability Services and Title IX Coordinator at Baylor College of Medicine in Houston, TX, Director of Community Standards at The University of Texas at Arlington, and Program Coordinator for Student Conduct at Texas A&M University. Mikiba earned a Bachelor's degree in Communication and a Master's degree in Higher Education Administration from the University of Louisville in Kentucky. She is currently pursuing a Doctorate of Education from the University of St. Thomas in Houston, Texas. Mikiba is an active member of ASCA serving as State Coordinator for Texas from 2015 - 2019, she was the recipient of the State Coordinator of the Year Award in 2019, served as faculty for the Sexual Misconduct Institute at Swathmore College in 2018 and participated as Gehring faculty for the Advanced Sexual Misconduct Institute in 2018.

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Alyssa Leffall (Guest faculty). Alyssa Leffall currently serves as the Assistant Dean for Student Affairs at Mercer University's Walter F. George School of Law. In this role, she manages traditional student affairs functions for law students, including serving as liaison to the Title IX Office, coordinating student ADA accommodations, assisting students in crisis, and providing guidance to student organizations. Prior to her current role, Alyssa served in a number of roles within the Division of Student Affairs at Texas A&M University, most recently as Special Assistant to the Vice President for Student Affairs, where she managed the student conduct appeals process (including Title IX cases) and oversaw special projects within the division. Before joining the Vice President's office, Alyssa served as Program Coordinator for the Student Conduct Office at Texas A&M, where she was responsible for supervising and training student conduct administrators to resolve general and Title IX cases, as well as managing daily operations for the unit. In addition to her campus involvement, Alyssa is a member of the Association for Student Conduct Administration (ASCA), Student Affairs Administrators in Higher Education (NASPA), National Association of Law Student Affairs Professionals (NALSAP), Texas Association of College & University Student Personnel Administrators (TACUSPA), and the State Bar of Texas. She is a former member of the Board of Directors for ASCA (2017-18) and is past ASCA Presidential Graduate Assistant (2014). A native of Marshall, Texas, Alyssa earned a Bachelor of Science in Kinesiology from Texas A&M University, a Juris Doctor from Thurgood Marshall School of Law at Texas Southern University, and a Master of Science in Higher Education Administration from Texas A&M University. After practicing business litigation for several years, Alyssa decided to follow her passion – working with college and university students. Prior to her current position, Alyssa held multiple roles in student conduct. Her passion in the field of student affairs is focused on student development, including developing engaged students and facilitating difficult conversations



Schedule

[All Times Eastern Standard Time]

DAY 1: Monday, July 20, 2020

Virtual Classroom Preparation:

- Workbook
 - Read ASCA White Paper on the Title IX Regulation
 - Fill out information on progress towards compliance with the Title IX Regulation
 - Develop initial questions you have about implementing the regulation
 - Alternative Dispute Resolution

TIME	SUBJECT	RESPONSIBLE FACULTY
1:00PM – 1:30PM	Introductions	All
1:30PM – 1:35PM	Mindfulness	Kristen
1:35PM – 2:10PM	Proposed Regulation	Kristen
2:10PM – 3:50PM	Beyond TIX – Title VII, State Law, etc.	Brandon
3:50PM - 4:00PM	Break	
4:00PM – 4:45PM	Informal Resolutions	Mikiba
4:45PM – 5:00PM	Independent Learning Groups	All

DAY 2: Tuesday, July 21, 2020

Virtual Classroom Preparation and Independent Learning

- Workbook
 - Logistics of Higher Education
 - Case Law
- Connect with your discussion group and process through workbook questions
- Engage in one of the mindfulness exercises found in the workbook

TIME	SUBJECT	RESPONSIBLE FACULTY
1:00PM – 1:15PM	Questions from yesterday or independent work	All
1:15PM – 1:20PM	Mindfulness	Brandon
1:20PM – 3:20PM	Hearings – components/strategies	Kristen
3:20PM – 3:30PM	Break	
3:30PM – 5:00PM	Relevance Determinations	Alyssa



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DAY 3: Wednesday, July 22, 2020

Independent Learning

- Workbook
 - Stalking and Threat assessment
- Connect with your discussion group
- Develop questions/topics you might have for faculty one on ones
- Engage in one of the mindfulness exercises found in the workbook

TIME	SUBJECT	RESPONSIBLE FACULTY
1:00PM – 5:00PM	Virtual Office Hours/One on ones	All

DAY 4: Thursday, July 23, 2020

Virtual Classroom Preparation and Independent Learning

- Workbook
 - Consent
 - Case Study (w/ Discussion Group)
 - Implicit Bias
- Engage in one of the mindfulness exercises found in the workbook

TIME	SUBJECT	RESPONSIBLE FACULTY
1:00PM – 1:10PM	Questions from yesterday or independent work	
1:10PM – 2:50PM	Identities and Intersectionality	Kristen & Mikiba
2:50PM – 3:00PM	Break	
3:00PM – 3:10PM	Mindfulness	Brandon
3:10PM – 5:00PM	Identities and Intersectionality (cont.)	Kristen & Mikiba

DAY 5: Friday, July 24, 2020

- Workbook
 - Reflect on prior day
 - Social media, public opinion, policy, & practice
 - Complete self-care evaluation
- Connect with your discussion group

TIME	SUBJECT	RESPONSIBLE FACULTY
1:00PM – 1:15PM	Questions from yesterday or independent work	
1:15PM – 3:00PM	Dating and Domestic Violence	Brandon
3:00PM – 3:10PM	Break	
3:10PM – 3:40PM	Burnout, Mindfulness, and Self Care	Mikiba
3:40PM – 4:30PM	Connect with your Discussion Group	
4:30PM – 5:00PM	Lingering Questions and Tying the Bow	All



Mindfulness Exercises

Breathing Exercises

1. Inhale through the nose for a slow count of five, hold for a count of five, exhale through your mouth for a count of five
 - a. When inhaling, think of filling your lungs all the way to the base of your lungs, you should not experience movement just in your chest and rib cage
 - b. When exhaling, start at the base of your lungs working to push all of the air out
2. Exhale gently dropping your head forward, inhale as you roll your head to your right shoulder. Exhale rolling your head down and center, inhale as you roll your head to your left shoulder. Repeat.
3. Yawn and stretch for 10 seconds.
4. Let your arms hang at your sides. Clench your fists. Keeping your arms at your sides, rotate your arms so that your fingers and thumbs are pointed forward. Inhale deeply. Exhale into your fists... meaning think about the energy from the exhale passing through your fists.

Miscellaneous

Leonie Stewart-Weeks (2020)

1. Stroke your hands: Lower or close your eyes. Take the index finger of your right hand and slowly move it up and down on the outside of your fingers. Once you have mindfully stroked your left hand, swap and let your left hand stroke the fingers of your right hand.
2. Mindfully eat a raisin: Take a raisin or a piece of chocolate and mindfully eat it. Slow down, sense it, savor it and smile between bites. Purposefully slow down. Use all your senses to see it, touch it, smell it, and sense it. Then gently pop it into your mouth and really savor it. Savor its texture, its taste, how it feels in your mouth. Let it linger and then swallow it. After you have swallowed it, let your lips turn up slightly and smile. Do the same thing for each raisin you eat or bite you take.
3. STOP:
Stand up and breathe. Feel your connection to the earth.
Tune in to your body. Lower your gaze. Scan your body and notice physical sensations or emotions. Discharge any unpleasant sensations, emotions or feelings on the out breath. Notice any pleasant ones and let them fill you up on the in breath.
Observe. Lift your eyes and take in your surroundings. Observe something in your environment that is pleasant and be grateful for it and its beauty.
Possibility. Ask yourself what is possible or what is new or what is a forward step.

If you find yourself being reactive, try the following steps:

- Pause and take one to three big breaths.
- Say “step back.” (You don’t have to physically step back, you can just do it in your mind.)
- Say “clear head.”
- Say “calm body.”
- Breathe again. Say “relax,” “melt” or “ease.”



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4. Loving-Kindness meditation: For one minute, repeat 'May I be happy, may I be well, may I be filled with kindness and peace.' You can substitute "you" for "I" and think of someone you know and like, or just send love to all people.
5. An Aspiration: Decide on an aspiration. Just ask yourself this question: What is my heart's aspiration? Pause for about 20 seconds. Do this a second or third time and write down what comes. Perhaps it is to come from love, or to be kind to yourself or others or to be patient. Once you decide which aspiration you like best, say that at the beginning of the day. This will set you up for your day and your interactions with others (and even with yourself).

Other

1. Write a "love" letter to someone you care about
2. Publicly or privately express gratitude to someone
3. Publicly express gratitude for something
4. Share good news
5. Play a game with someone in your household or over zoom with someone distant (you could do this with your independent learning group)
6. If you have a pet that can play – play with your pet
7. If you like puns – look some up on Google
8. Look at nature – real nature – find a tree to watch, squirrels, pigeons, whatever you have access to



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Journaling

Kira (2018)

Here are a few tips to help you get started:

1. Start by putting yourself in mindful space. Slow down your mental chatter and begin to focus on your breath as a way to ground you for this practice.
2. It's always a good idea to "arrive" before you start writing. If it's challenging for you to get grounded, try practicing walking meditation or a short breath exercise to help you become fully present before you even open your book.
3. Take out a journal, start a fresh document on your computer, or open a new notes tab on your phone. (Try not to read the previous entry until after you've finished the one for today).
4. Allow yourself to have enough time for reflection. Focus on being present and not thinking about anything on your to-do list. Being here right now is all you need to commit to at this moment.
5. Take a few more deep breaths and release any feelings of expectation or judgement from yourself. This practice of meaningful expression can be incredibly rewarding if you dedicate your time and presence to it. Have patience and compassion as you get into the rhythm of your writing.
6. Reflecting about an event, focusing on self-affirmation, expressing gratitude, or searching for meaning can all be powerful drivers for your writing. Allow yourself to be drawn to whatever it is you feel like you need to express today.
7. If you're wondering where to begin, you can think about your mindful practice today as well as any triggers that encouraged your mind to wander.
8. Notice if there are any repetitive thoughts that are circulating in your mind and pulling your attention away from the here and now. Are you scared, stressed, nervous, or excited about something? Does something or someone set you off of your mindful course?
9. Another great way to get started is to practice your awareness skills by focusing your attention to something around you. It can be a cup of tea, a plant, or your pet. Note all of the small details that you can about the subject of your investigation. Become fully aware of everything you can about your chosen item or creature.
10. Make a ritual out of your writing. Every day around the same time, follow a routine such as 2-minutes of sitting meditation followed by one minute of stillness before writing. If you enjoy the benefits of aromatherapy, try to use some meditative essential oils to help inspire tranquility and mental peace. Walking meditation can also help you clear your mind both before and after a writing session.
11. If you're finding trouble locating a source of inspiration or prefer to have a bit more of a guide to get you started, try one of the mindful journaling prompts below.
12. Try to come back to your practice every day. Choose a time that works well for you and make writing part of your routine.



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Journaling Prompts

Kira (2018)

1. I am grateful for...
2. I honor myself by...
3. I am proud of myself for...
4. I can be kinder towards myself by...
5. If my body had a voice it would whisper...
6. I am happiest when...
7. I feel so [attractive] when...
8. I forgive myself for...
9. I recognize these strengths in myself...
10. I am no longer afraid to...
11. I showed courage today by...
12. I feel most energized when...
13. I should listen to my body more when...
14. I could be kinder by...
15. I can become more patient by...
16. I am so in love with...
17. I am so inspired by...
18. I felt so much joy when...
19. I know I am capable of...
20. I nurture myself by...
21. I honor my body by...
22. I am in tune with...
23. I can follow my passions...
24. I have come to peace with...
25. I have learned to let go...
26. I am going to try...
27. I am so excited about...
28. I believe that I can...
29. I know that I will...
30. I am so blessed to...
31. I appreciate my family/friends because...
32. I take time to care for myself by...
33. I listen to my intuition by...
34. I allow myself to become inspired by...
35. I permit myself to feel...
36. I grant myself permission for...
37. I recognize my value by...
38. I am truthful with myself about...
39. I gift myself...
40. I am aware that...
41. I am practicing self-care by...
42. I believe in...
43. I trust that...
44. I release...
45. I am aware of...
46. I am free to
47. I will discover...
48. I take the road...
49. I believe this adventure will...



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Emotion Identification and Reflection

Review the AllTheFeelz emotion wheel (or the list below).

Happy	Sad	Disgusted	Angry	Fearful	Bad	Surprised
Playful	Lonely	Repelled	Critical	Threatened	Bored	Startled
Aroused	Isolated	Hesitant	Skeptical	Nervous	Indifferent	Shocked
Cheeky	Abandoned	Horrified	Dismissive	Exposed	Apathetic	Dismayed
Content	Vulnerable	Awful	Distant	Rejected	Busy	Confused
Free	Victimized	Detestable	Withdrawn	Excluded	Pressured	Disillusioned
Joyful	Fragile	Nauseated	Numb	Persecuted	Rushed	Perplexed
Interested	Despair	Disappointed	Frustrated	Weak	Stressed	Amazed
Curious	Grief	Appalled	Infuriated	Worthless	Overwhelmed	Astonished
Inquisitive	Powerlessness	Revolted	Annoyed	Insignificant	Out of Control	Awe
Proud	Guilty	Disapproving	Aggressive	Insecure	Tired	Excited
Successful	Ashamed	Judgmental	Provoked	Inadequate	Sleepy	Eager
Confident	Remorseful	Humiliated	Hostile	Inferior	Unfocused	Energetic
Accepted	Depressed		Mad	Anxious		
Respected	Empty		Furious	Distraught		
Valued	Unimportant		Jealous	Worried		
Powerful	Hurt		Bitter	Scared		
Courageous	Embarrassed		Indignant	Helpless		
Creative	Disappointed		Violated	Frightened		
Peaceful			Humiliated			
Loving			Disrespected			
Thankful			Ridiculed			
Trusting			Let Down			
Sensitive			Betrayed			
Intimate			Resentful			
Optimistic						
Hopeful						
Inspired						

Common Zen Media Inc & All The Feelz. Emotions list pulled from <https://i.redd.it/Osa57v1hlw451.jpg>

Circle emotions you are experiencing.

What is contributing to those emotions?



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Do you perceive any emotion to be positive or negative? Yes No

If so, what goes where?

Positive	Negative

What is the intensity of each emotion? Is any one emotion overwhelming others?

If any negative emotion is overwhelming positive emotions or the only emotions present are negative, what actions could you take to either reduce the intensity or otherwise manage those emotions?

Exercise and Physical Movement

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Stand back from your desk and swing your arms 2. Play a song you like and take a one-song dance break 3. Play catch with yourself <ol style="list-style-type: none"> a. Throw a ball in the air and catch it a few times b. Bounce a ball against a wall 4. Go for a walk 5. Complete ten shoulder rolls | <ol style="list-style-type: none"> 6. Go for a run (even a couple of short sprints) 7. Find and complete (or do a portion of) an online yoga class 8. Meditate – there are guides online for this 9. Stretch for 5 minutes 10. Play a physically distant sport as allowed where you live 11. Workout 12. Skip 10 feet – while smiling |
|--|--|



Day 1: Monday, July 20, 2020

Virtual Classroom Preparation and Independent Learning

Complete prior to Monday Virtual Classroom (p. 15 – 17)

Read ASCA White paper:

Loaded in Tovuti: Harrell and White, 2020

Steps Towards Compliance

What steps have you already taken towards compliance with the Title IX Regulation?

- Updated policy
- Updated letter templates
- Determined who will be Advisors
- Updated processes
- Updated website
- Updated resource documents
- Established informal resolution process
- Established roles (TIX Co, Invest, DM, Appeal Auth, etc.)
- Created hearing process
- Created opt-out option for hearings
- Evaluated existing interim (support) measure in context of being non-burdensome to one of the parties
- Created/maintained emergency removal process
- Created/maintained complaint form with signature
- Clearly established who “has authority to institute corrective measures”
- Created/maintained process for determining question credibility during live hearing
- Ensured new policies/procedures also in compliance with state law
- Created advisor expectations document for university provided advisors

Other:

What questions do you have regarding your planned implementation?

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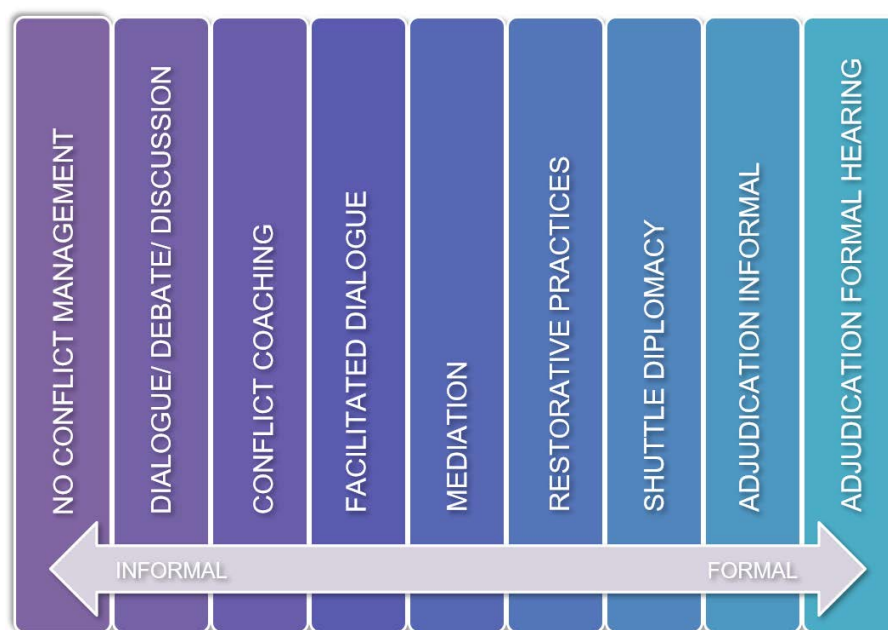
Alternative Dispute Resolution

Learning Outcomes

1. Participants will be aware of various alternative dispute options
2. Participants will be able to determine the appropriate resolution option
3. Participants will be aware of strategies for implementation

The following information is for your review and to provide familiarity prior to the presentation on informal resolutions in sexual misconduct cases.

Alternative Dispute Resolution (ADR) is a philosophy of conflict resolution that uses Restorative Justice and Social Justice principles to resolve interpersonal conflict. Some forms of ADR may be appropriate to utilize as informal resolution processes under the new regulations.



Schrage, J.M. & Thompson, M.C. (2008)

The Schrage Thompson Spectrum Model (Schrage & Thompson, 2008) offers campus administrators a continuum of conflict resolution options ranging from informal to formal.

Graphic and definitions adapted from:

Schrage, J.M. & Giacomini, N.G. (2009). *Reframing campus conflict: Student conduct practice through a social justice lens*. Sterling, VA: Stylus Publishing LLC

Schrage, J.M. & Thompson, M. C. (2008). Spectrum Model presented at the 2008 Donald D. Gehring Academy for Student Conduct Administration. Chapter 4. Providing a Spectrum of Resolution Options. In Schrage & Giacomini (2009) *Reframing campus conflict: Student conduct, practice through a social justice lens*. Sterling, VA: Stylus Publishing LLC.



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Definitions

No Conflict Management: Administration intentionally refrains from initiating involvement in a campus conflict.

Dialogue: Students engage in a conversation to gain understanding or to manage a conflict independent of administrator intervention or third-party facilitation.

Conflict Coaching: Students seek counsel and guidance from administration in order to engage a conflict more effectively/independently.

Facilitated Dialogue: Students access administration for facilitation services to engage in a conversation to gain understanding or to manage a conflict. Parties maintain ownership of decisions concerning the conversation or any resolution of conflict.

Mediation: Students access administration to serve as a third-party to coordinate a structured session aimed at resolving a conflict and/or constructing a go-forward or future state for the parties involved.

Restorative Justice Practices: Administration provides space and facilitation for students taking ownership for harmful behavior and parties affected by the behavior to jointly repair harm.

Shuttle Diplomacy: Administration actively negotiates an agreement between two parties that do not wish to directly engage with one another.

Adjudication Informal: Using the process outlined in campus policy, administration meets with the parties to resolve an incident. Resolution is achieved when the parties accept an agreed upon outcome.

Adjudication Formal: Using the process outlined in campus policy, administration facilitates a formal process that includes a hearing. A third-party determines whether a policy violation has occurred, and if sanctions are in order.

Reflection:

- Why do you believe that Office for Civil Rights restricted the use of informal resolutions for sexual harassment by an employee against a student?
- How would you respond to someone making the argument that an information resolution would be appropriate?



Advanced Sexual Misconduct

Virtual Classroom

Introductions

1:00 – 1:30pm

Notes

Proposed Regulation

1:35 – 2:10pm

Learning Outcomes

1. Participants will be aware of significant items in the proposed/final regulation
2. Participants will be able to evaluate aspects of their current processes that may need to shift

Notes



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Sexual Harassment: Including and Beyond Title IX

2:10 – 3:50pm

Learning Outcomes

1. Participants will be able to better define Sexual Harassment.
2. Participants will have a better understanding of the history of Sexual Harassment
3. Participants will have a better understanding of how to investigate Sexual Harassment.

Slide 5

What is Sexual Harassment?

- Broadly speaking:
 - Form of Sex Discrimination.
 - May take place in situation where there is a power differential.
 - Includes:
 - Sexual advances
 - Requests for sexual favors
 - Verbal or physical behavior of a sexual nature

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Slide 6

The creation of the Term “Sexual Harassment”

- Grew from a “consciousness-raising” session professor Lin Farley held in 1974 as part of a Cornell University course on women and work.
 - All the female students were asked about experiences at work. 100% of them had at some time been fired or quit due to sexual harassment in the workplace.
- Catharine MacKinnon’s analysis in the book, *Sexual Harassment of Working Women* (1976).

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Slide 7

Case Law

- Title VII of the Civil Rights Act of 1964 (sex is a protected class).
 - Sex was added by Howard Smith, a Democrat from VA.
 - “I presume that if there had been any necessity to point out that women were a second-class sex,” she said, “the laughter would have proved it.” – Margaret Griffiths, Democrat from MI.

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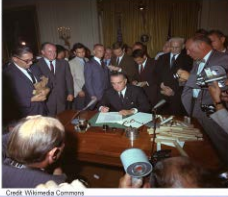


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Slide 8

Case Law

President Lyndon Johnson signing the Civil Rights Act into law.



Credit Wikimedia Commons



Slide 9

Case Law

- **Title VI (1964)**
 - Passed to prohibit discrimination in federally funded private and public entities.
 - It included race, color, and national origin.
- **Title IX of the Education Amendments Act of 1972**
 - Passed into law by President Richard Nixon.
 - *“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”*

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Slide 10

Case Law

- **Alexander v. Yale (1980)**
 - Argued sexual harassment was sex discrimination.
- **Late 1980s**
 - The Supreme Court interpreted Title VII of the Civil Rights Act of 1964 to include discrimination based on “sex” as sexual harassment in the work place.

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Slide 11

Case Law

- **Meritor Savings Bank v. Vinson (1986)**
 - Mechelle Vinson is terminated from her position at the bank.
 - Vinson sues Sidney Taylor, the Vice-President of the bank claiming that for four years Taylor subjected her to sexual harassment by creating a “hostile work environment”.
 - Vinson claimed that Taylor coerced her into having sex with him. Vinson said she had sex with Taylor “40 or 50 times”, he exposed himself to her, touched her in public, and raped her multiple times.

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Slide 12

Case Law

- **Meritor Savings Bank v. Vinson (1986)**
 - This court case articulated that the creation of a hostile work environment is a form of discrimination.
 - Court ruled that the sexual conduct between Taylor and Vinson could not be consensual due to the power differential between a supervisor and a subordinate in the workplace.
 - Does your school have a policy on intimate relationships? What is it? Who investigates it?

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Slide 13

Case Law

- **Davis v. Monroe (1999)**
 - School boards are liable when officials are deliberately indifferent to sexual harassment, of which they have actual knowledge, that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.
- **Civil Rights Act of 1964 (June 15, 2020)**
 - Supreme Court ruled that the Act, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity.
 - "An employer who fires an individual merely for being gay or transgender defies the law", Justice Neil M. Gorsuch wrote for the majority in the 6 to 3 ruling.

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Slide 14

Sexual Harassment (Defined by the Regs)

- "Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:
 - (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)."

(Pages 2014 – 2015 of the federal regulations for Title IX)



Slide 15

Mandatory Response Obligations

Schools must respond to harassment allegations promptly and in a manner that is not deliberately indifferent. Mandatory response obligations include:

1. Promptly offering supportive measures to the Complainant.
2. Must avoid imposing disciplinary sanctions against a respondent without following the § 106.45 grievance process.
3. § 106.44(b)(1) requires a recipient to investigate sexual harassment allegations made in a formal complaint.
4. § 106.45 prescribes specific procedural protections for complainants, and respondents, when a recipient investigates and adjudicates formal complaints

https://www2.ed.gov/about/offices/list/oeo/docs/10645req_unofficial.pdf
(Footnote 934, Page 675)



Advanced Sexual Misconduct

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Quid Pro Quo (Defined by the Regs)

- Latin phrase meaning "this for that."
- "An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct."
 - Raise/promotion for sexual favors
 - Better grade if you go on a date with the professor

(Page 2014 of the federal regulations for Title IX)



Slide 17



<https://arnoldzwicky.org/2017/05/20/squid-pro-quo>



Advanced Sexual Misconduct

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Hostile Environment (Defined by the Regs)

- "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."
- How do you define "reasonable person"?
 - Reasonable person means a reasonable person under similar circumstances and with similar identities...
- "Severe, pervasive, and objectively offensive" instead of "Severe, pervasive, or objectively offensive."

(Page 2014 of the federal regulations for Title IX)



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Sexual Assault (Defined by the Regs)

- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)"
- 20 U.S.C. 1092(f)(6)(A)(v), "means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation."

(Page 2015 of the federal regulations for Title IX)
(20 U.S.C. 1092 (f)(6)(A)(v))



Slide 20

Stalking (Defined by the Regs)

- "Stalking" as defined in 34 U.S.C. 12291(a)(30)."
- 34 U.S.C. 12291(a)(30). "The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - (A) fear for his or her safety or the safety of others; or
 - (B) suffer substantial emotional distress."

(Page 2015 of the federal regulations for Title IX)
(34 U.S.C. 12291 (a)(30))



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Dating and Domestic Violence (Defined by the Regs)

- "Dating Violence" as defined in 34 U.S.C. 12291(a)(10),
- "Domestic Violence" as defined in 34 U.S.C. 12291(a)(8)
- This will be covered in more in depth later in the week during the presentation on dating and domestic violence.

(Page 2015 of the federal regulations for Title IX)





Advanced Sexual Misconduct

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Issues that lead to Hostile Environment

- Power dynamics
 - Person in power vs. person who is not
- Greek Life
- Band
- Sports
- Lack of self-awareness
 - Comments
 - Jokes

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Sexism

What is sexism?

1. Belief that one sex (usually male) is superior to another sex (usually female).
2. Behavior, conditions, or attitudes that foster stereotypes of social roles based on sex.

(Defined by Merriam Webster Dictionary)



Slide 24

Examples of Sexism (Title VII)

1. Unsolicited comments, typically of a sexual nature, about one's body.
2. Being seen as the "office servant"
 - Getting drinks
 - Planning activities such as office birthdays
 - Making copies
3. Nicknames:
 - Honey
 - Sweetie
 - Sugar
4. Double Standards:
 - Women are "pushy" while men are "go-getters"
5. Being asked about marriage and children when men are not

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Examples of Sexism (Title IX)

1. Name calling:
 - Beer bitch
 - Chip bitch
2. Bros and hoes parties
3. Objectification of women's bodies

"You don't belong out here." Accorsi screamed at Derick (Ringo) Adamson, head coach of the women's track-and-field team, according to Adamson. "You were told you don't belong out here when we're out here." How was Accorsi supposed to get 18-year-old boys to concentrate on X's and O's, he said, when their eyes were "going back and forth" at the sight of "girls running out here with sports bras." Adamson would later recount in a written statement to university officials. (Quoted from the Chronicle's March 21, 2019 article entitled, "Sport-Bra Outrage And a Fight Over Everyday Sexism")

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Advanced Sexual Misconduct

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Sexism vs. Sexual Harassment

Is sexism a form of sexual harassment?

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Title IX intersecting with Title VII

- May not always use Title IX.
 - Title VII
 - Consider the status of the Complainant and Respondent – Employee vs. employee, Employee vs. student, etc.
 - Title VII policy provides more freedom.



Slide 28

Challenges in Investigations

- Power Dynamics
 - Role of Complainant
 - Role of Respondent
- Credibility
 - Any witnesses?
 - Their relationship to the person
 - Any evidence?
- Reluctant Parties
- Retaliation





Advanced Sexual Misconduct

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Processing questions:

- Does your institution have an amorous relationships policy?
 - How do you define it?
 - Who investigates it?
 - Appeals?
- Politics surrounding this policy.
- How wide-sweeping is the policy?
- How do you assess power-relationships with your staff?
- How do you assess whether it is truly consensual?



Advanced Sexual Misconduct

Case Study 1 Overview:

Charles Walters is a Charge Nurse at Central University’s Hospital. Charles, who is divorced, is ready to begin dating. Charles has been texting several nurses that he finds attractive. The text messages begin by ranging from asking a nurse out on a date to telling another nurse she’s very attractive and he can’t believe that she is still single. Charles’ supervisor overhears two nurses, both asked out by Charles, talking about the text messages. Charles’ supervisor talks to the two nurses and finds out that he is asking out “young, single, pretty” nurses. Charles is in a supervisory role of some but not all of the nurses he messaged. Charles’ supervisor does not report this to your office.

Charles’ text messages with the nurses continue. Charles has continued to comment to the nurses that they are pretty, they are nice, and he would love to go out with them. They have so much in common. They are single and work at the hospital. So they know that he stays in shape he has sent them photos of him by his pool wearing swim trunks and glasses with no shirt. Charles explains that he knows nurses just beginning out in their career do not make a lot of money so he is more than happy to pay for the date – dinner and a movie.

Concerned that maybe they did not receive his text messages, Charles begins to tell the nurses in person that he finds them very attractive and he’d love to go out on a date with them. While talking with them, he smiles and places his hand on their upper arm. He wants to show he is affectionate without being creepy. Charles doesn’t want them to think he is insincere by asking out multiple nurses so he finds them when they are alone to talk with them. Charles talked to one nurse who was in the supply closet and one nurse who parked beside him in the garage. Since it was the end of the day he waited for her to walk to her car. To help win over some of the nurses he has started bringing them cups of coffee in the morning and leaving them notes. He has also offered to buy their lunch.

One of the nurses reports this to your office. She isn’t sure if this is a violation but she wants Charles’ behavior to stop. She also mentions that she is surprised the behavior continued since his supervisor was made aware of the behavior a month or so ago.

Is this sexual harassment as defined by Title IX?

Is this sexual harassment as defined by Title VII?



Advanced Sexual Misconduct

If you decided to pursue an investigation, who do you reach out to first?

Do you have any concerns?

Was Charles' behavior quid pro quo?

Was Charles' behavior "severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"?

Did Charles' behavior explicitly or implicitly affect the nurses' employment, unreasonably interfere with their work performance, or create an intimidating, hostile, or offensive work environment?



Advanced Sexual Misconduct

Case Study 2 Overview:

Michael Hart and Jennifer Daniels are both students at Central University. They met during C-Week, the week before school starts and new students get to move in early. They had an instant connection and immediately began dating. They dated their entire freshman year.

Jennifer was so committed to her relationship that she moved into Michael's residence hall during the spring term. She even took some of the same general ed classes Michael did in the spring semester so they could spend more time together and then be able to help each other study. Michael was not as committed to the relationship.

Michael does not want to be tied down so quickly as he's just going to college. Michael is not faithful during the majority of their relationship. Jennifer does not find this out until two weeks before finals week when one of the girls tells her because she felt guilty believing Michael had been single at the time.

Jennifer is clearly upset by the news. She confronts Michael who tells her he had cheated on her multiple times. Jennifer and Michael get into a huge fight and she storms out of his room. Jennifer's roommate is upset that

Michael cheated on her and suggests Jennifer get revenge. Jennifer's roommate suggests that to make sure he can't cheat on any future girls that Jennifer disclose Michael has a Sexually Transmitted Infection (STI). Jennifer and her roommate print out a flier with Michael's picture on it saying to avoid him at all costs because he has Chlamydia. As Michael and his friends see them they take them down. But Jennifer and her roommate keep putting them up by the elevators in the hallway for everyone to see.

Jennifer also wants everyone to know that Michael was unfaithful and they should not trust him. Jennifer tells the whole story on multiple social media accounts tagging Michael in it. She writes that he was unfaithful, had multiple sexual relationships with other girls, and that he has Chlamydia. Jennifer also reports it to cheaters.com with his picture. Although Michael requests his picture and the story be removed from the website, the website refuses.

Michael is mortified because the entire school seems to know about what has happened. Although he tried to remove the fliers they were always put back up. He untagged himself in the stories but people already saw it and were asking him about it. Michael makes arrangements to move out early and take his finals online. His parents are furious with the school "for allowing this to happen" and file a complaint with your office.

Is this Sexual Harassment as defined by Title IX?



Advanced Sexual Misconduct

Who do you talk to first?

What other actions might you take?

Was Jennifer’s behavior “severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity”?

Can your institution do anything about the post on cheaters.com?

Can your institution do anything about Jennifer’s social media posts?



Advanced Sexual Misconduct

Is the fact that Michael moved out and took his finals online a relevant factor?



Advanced Sexual Misconduct

Informal Resolutions

4:00 – 4:45pm

Learning Outcomes

1. Participants will be aware of the various informal resolution/alternative dispute options
2. Participants will be able to determine the appropriate resolution option
3. Participants will be aware of strategies for implementation

Slide 5

Agenda

- Informal resolution highlights from the 2020 regs.
- Alternative dispute recommendations for informal resolution processes.
- Suggestions for implementation.



Slide 6

Informal Resolution Under New Regulations

Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the voluntary, written consent of both parties; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student.



Slide 7

Informal Resolution Highlights

- Must identify persons designated to facilitate informal resolution processes.
- Informal resolution processes must be reasonably prompt.
- Informal resolution processes should be included with notice of allegations.
- Informal resolution processes must be voluntary and can only be offered if a formal complaint is filed.
- Must keep records regarding the facilitation of an informal resolution process.



Advanced Sexual Misconduct

Slide 9

Alternative Dispute Resolution

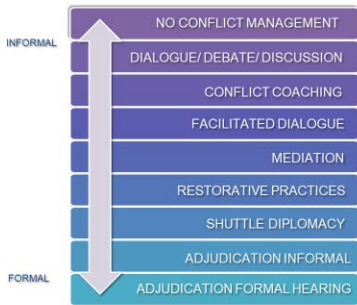
Philosophy of conflict resolution that uses Restorative Justice and Social Justice principals to resolve interpersonal conflict.

- Complainant options
- Respondent accountability
- Community opportunities and protection
- Community accountability
- Competency development

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Slide 10



Schrago, J.M. & Thomas, M.C. (2008)



Slide 11

ADR Recommendations for Informal Resolution

- Mediation
- Restorative Practices
- Shuttle Diplomacy
- Adjudication Informal

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Slide 12

Mediation

Complainant and respondent access administration to serve as a third-party to coordinate a structured session aimed at resolving a conflict and/or constructing a go-forward or future state for the parties involved.

- Achieve reconciliation
- Find settlement or agreement
- Reach understanding

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Tenets of Mediation

1. Neutrality
2. Confidentiality
3. Authority
4. Autonomy

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Mediation Models

- Pure Form Mediation
- Caucus Mediation (Shuttle Diplomacy)
- Transformative Mediation
- Peacemaker Mediation
- Narrative Mediation
- Therapeutic Mediation

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Restorative Practices

Administration provides space and facilitation for respondents taking ownership for harmful behavior and parties affected by the behavior to jointly repair harm.

- Focused on restoration
- Earning trust
- Building community

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Principals of Restorative Practices

1. Accessible to the community.
2. Encourage active participation of community members.
3. Accountability measures (sanctions) should focus on repairing harm.
4. Earnest reintegration of respondents into the community.

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Restorative Practice Models

- Mediation
- Conferencing
- Circles
- Boards

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Shuttle Diplomacy

Administration actively negotiates an agreement between two parties that do not wish to directly engage with one another.

- A form of mediation
- Private spaces for complainant and respondent
- Focused on reaching resolution.

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Adjudication Informal

Using the process outlined in campus policy, administration meets with the parties to resolve an incident. Resolution is achieved when the parties accept an agreed upon outcome.

- Administrative decision

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Recordkeeping

- Mediation
- Restorative practices
- Shuttle Diplomacy
- Adjudication Informal

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Remember

- The 2001 Guidance discourages schools from using mediation (or other informal resolution) to resolve sexual assault allegations.
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student.
- Informal resolution processes are not a shortcut to resolution.

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Questions



Advanced Sexual Misconduct

Independent Learning Groups

4:45 – 5:00pm

Questions for discussion

- Conduct introductions
- Collect contact information
- Set a regular meeting time each day in between virtual classroom sessions
Make sure you have time to go through your workbook assignments before meeting with your group
- What are your concerns about implementation of the regulation?
- What are ways you are working through challenges?
- What are ways you are incorporating your institutions educational mission into your changes policies and procedures?

Notes:



Day 2: Tuesday, July 21, 2020

Virtual Classroom Preparation and Independent Learning

Complete prior to Tuesday Virtual Classroom (p. 38 – 61)

Logistics of Higher Education

Learning Outcomes

1. Participants will be aware of student-related logistics
2. Participants will be able to assess practices

For this portion of the workbook, you are encouraged to fill out the multiple sections below and do some reflection on implications for your institution. If there is a yes/no question, think about what your answer means for your institution and those you serve. Consider if this remains the best answer to those questions and whether any shifts may need to occur. Space has been left for notes you may take on these reflections.

What is the box of my work?

- What types of behaviors do you address? *Fill in Blank Behavior Boxes Below*
- Are there any behaviors/situations you defer to another office/area? Yes No
- Are there any behaviors/situations that you would dismiss without any action? Yes No
- How are you communicating with your campus community regarding your box? Yes No
 - o If yes, how are you doing that and is it enough?

Notes:



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Example of Behavior Boxes

Texas A&M University

My Box

Civil Rights and Equity Investigations
Office Name

Behavior by: Students Faculty Staff Third Parties

Direct Responsibility

- Sexual Harassment (Title IX)
 - Dating/Domestic Violence
 - Stalking
 - Sexual Assault
- Sex-Based Misconduct
- Discrimination (race, color, sex, religion, national origin, age, disability, genetic information, veteran status, sexual orientation, gender identity)
- Retaliation

Direct Responsibility + behavior arising out of the same fact pattern relating to

- Housing Handbooks
- Corps of Cadets Standard
- Other nonacademic published University rules

<p style="text-align: center;"><u>Student Conduct Office</u> Office Name</p> <p>Behavior by: <u>Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Student Conduct Code (non-academic behavior) <p>Direct Responsibility + behavior arising out of the same fact pattern relating to</p> <ul style="list-style-type: none"> • Housing Handbooks • Corps of Cadets Standard • Other nonacademic published University rules 	<p style="text-align: center;"><u>Aggie Honor System Office</u> Office Name</p> <p>Behavior by: <u>Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Academic Rules 	<p style="text-align: center;"><u>Department of Student Activities</u> Office Name</p> <p>Behavior by: <u>Student Organizations</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Student Conduct Code • Organization Handbook
<p style="text-align: center;"><u>Human Resources</u> Office Name</p> <p>Behavior by: <u>Staff</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Non-<u>Discrim.</u> Employee Conduct 	<p style="text-align: center;"><u>Dean of Faculties</u> Office Name</p> <p>Behavior by: <u>Faculty Employees</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Non-<u>Discrim.</u> Faculty Conduct 	<p style="text-align: center;"><u>Department of Residence Life</u> Office Name</p> <p>Behavior by: <u>Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Housing Handbooks
<p style="text-align: center;"><u>Corps of Cadets</u> Office Name</p> <p>Behavior by: <u>Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Corps of Cadets Standard 	<p style="text-align: center;"><u>Athletics</u> Office Name</p> <p>Behavior by: <u>Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Athletics/Team Requirements 	<p style="text-align: center;"><u>ROTC</u> Office Name</p> <p>Behavior by: <u>Contracted Students</u></p> <p>Direct Responsibility</p> <ul style="list-style-type: none"> • Uniform Code of Military Justice



Advanced Sexual Misconduct

Behavior Boxes

My Box

Office Name

Behavior by: Students Faculty Staff Third Parties

Direct Responsibility

<p>_____</p> <p>Office Name</p> <p>Behavior by: _____</p> <p>Direct Responsibility</p> <table border="1"><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr></table>						<p>_____</p> <p>Office Name</p> <p>Behavior by: _____</p> <p>Direct Responsibility</p> <table border="1"><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr></table>						<p>_____</p> <p>Office Name</p> <p>Behavior by: _____</p> <p>Direct Responsibility</p> <table border="1"><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr></table>					
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Advanced Sexual Misconduct

Do you communicate when applicable?

R = Regularly

S = Sometimes

W = When Asked

N = Never

Communicate with/to	Case Status	Formal Resolution Outcomes	Informal Resolutions	Case Closures	Supportive Measures	Contact Restrictions	Premise Restrictions
Housing/Residence Life	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N	<input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> N
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Advanced Sexual Misconduct

Human Resources	<input type="checkbox"/> R	<input type="checkbox"/> R	<input type="checkbox"/> R	<input type="checkbox"/> R	<input type="checkbox"/> R	<input type="checkbox"/> R	<input type="checkbox"/> R
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What would others on campus say about your communication?

Amnesty

	Yes	No
Do you provide amnesty for complainants of sexual misconduct for conduct occurring at or near the same time as the reported incident?	<input type="checkbox"/>	<input type="checkbox"/>
Do you provide amnesty for witnesses of sexual misconduct for conduct occurring at or near the same time as the reported incident?	<input type="checkbox"/>	<input type="checkbox"/>
Can you charge severe behavior of a complainant even if committed at or near the same time as a reported sexual misconduct issue?	<input type="checkbox"/>	<input type="checkbox"/>
Can you charge severe behavior of a witness even if committed at or near the same time as a reported sexual misconduct issue?	<input type="checkbox"/>	<input type="checkbox"/>
Is your amnesty practice in writing?	<input type="checkbox"/>	<input type="checkbox"/>
If your Title IX/Civil Rights office is separate from your student conduct office, are you communicating with them regarding reports to ensure amnesty occurs?	<input type="checkbox"/>	<input type="checkbox"/>



Advanced Sexual Misconduct

What do you do with dating and domestic violence or other sexual misconduct if it is found that multiple parties (including the original complainant) engaged in violence or other behaviors in question?

Notes:

Holds and Transcript Notations

Type of holds we issue:

- Registration
- Transcript
- Degree Conferral
- Diploma

Reasons used for issuing holds:

- Initiated an investigation
- Failure to complete sanction
- Failure to appear for investigation meeting
- Failure to appear for hearing
- Investigation still in progress (graduation)
- Other: _____

Who receives the hold? Respondent Complainant Sometimes both/Neither

Do you place notations on student transcripts related to conduct outcomes? Yes No

Notes:



Advanced Sexual Misconduct

Are any of your practices regarding holds or other interim measures potentially problematic under the new regulation?

A finding of responsibility must be made before imposing any disciplinary sanctions or actions that are not supportive measures – a supportive measure can only be designed to support one party without unreasonably burdening the other party. 34 CFR §§106.45 & 106.30

What does “not in good standing” mean on your campus related to non-academic conduct?

What types of restrictions, if any, does this include?

- | | |
|---|--|
| <input type="checkbox"/> Loss of Leadership Positions | <input type="checkbox"/> Loss of University Representation |
| <input type="checkbox"/> Loss of Scholarships | <input type="checkbox"/> Loss of Organizational Affiliation |
| <input type="checkbox"/> Loss of Competition | <input type="checkbox"/> Loss of University Travel Opportunities |
| <input type="checkbox"/> Other: _____ | |



Advanced Sexual Misconduct

What are the pros and cons of implementing contact and/or premise restrictions?

Contact Restrictions		Premise Restrictions	
Pros	Cons	Pros	Cons

Do you have any restrictions that are automatically applied when a student is separated from your institution?

- Yes
- No

Notes:

How do you navigate court issued protective orders?

Background Checks and Other Disclosures

We have a clearly outlined process for disclosing information for:

- In person background checks
- Emailed/Faxed background checks
- FOIA, State Public Information Requests
- Other: _____
- Identifiable Information related to Violent Crimes
- Students Transferring to other IHE
- Audits



Advanced Sexual Misconduct

When asked for data from varying stakeholders, auditors, etc., we are easily able to collect what is asked for.

- Agree
- Disagree
- It Depends
- Oh Goodness, people will want data?

What would help make this easier?

How are you working with your prevention education unit?

How do you manage cases where someone has waited until behavior has escalated to extremes and/or the behavior occurred many months or even years prior to the report date?

Notes:

B: I am bound by R: Responsible for

- | | |
|--|---|
| <input type="checkbox"/> B: The United States Constitution | <input type="checkbox"/> B <input type="checkbox"/> R: System Rules/Policies |
| <input type="checkbox"/> B: Department of Education Regulations | <input type="checkbox"/> B <input type="checkbox"/> R: Student Rules/Policies |
| <input type="checkbox"/> B: State Laws | <input type="checkbox"/> B <input type="checkbox"/> R: Human Resource Rules/Policies |
| <input type="checkbox"/> B <input type="checkbox"/> R: Organizational Rules/Policies | <input type="checkbox"/> B <input type="checkbox"/> R: Handbooks (Residence Life, etc.) |
| <input type="checkbox"/> B <input type="checkbox"/> R: Other: _____ | <input type="checkbox"/> B <input type="checkbox"/> R: Other: _____ |



Advanced Sexual Misconduct

Current State of Affairs and Case Law

Learning Outcomes

1. Participants will be able to look up relevant case law to inform their practice
2. Participants will be able to identify current case law impacting sexual misconduct work

As budgets within higher education shrink while the workload continues to grow – or at least not slow down – it is more commonplace that one office address concerns/allegations of Title VII and Title IX. This section of the workbook covers relevant case law and guidance defining sexual harassment, hostile work environment, and quid pro quo as defined by Title VII as well as dear colleague letters and regulations regarding Title IX as well as case law that impacted and led us to the current Title IX regulations. The section also covers due process cases within higher education. Many of the cases and federal guidance documents referenced in this section provide a historical overview of these topics and may be very familiar to many of you. As you read through and refresh yourself on these critical cases consider the reflection questions as well as ways in which these cases and guidance continue to influence your practice.

DIXON V. ALABAMA (1961)

- Alabama state college expelled St. John Dixon and five other students, acting “in loco parentis” without a hearing.
- **Court held that a public university cannot expel a student without at least minimal due process, including notice of the allegations and an opportunity to be heard.**

Reflection

- What level of due process do you provide students within conduct cases?
- What level of due process do you provide students within Title IX cases?
- How does this due process overlap with the new Title IX Regulation?

Notes:



Advanced Sexual Misconduct

GOSS V. LOPEZ (1975)

- Nine high school students were suspended for 10 days for destroying school property.
- School principals did not provide hearings for the suspended students prior to the suspensions.
 - Ohio law did not require they do so.
- **In a 5-4 decision, the Court held that students had a right to education and could not remove that right “on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct had occurred.”**
- **Court found students facing suspension should be provided minimum due process – notice and hearing.**

Reflection

- What is your hearing process?
- Specifically, how are the hearings scheduled? Panel? One Person?
- What rights do both parties have at a hearing?
- In what ways was this requirement met through the single-investigator/civil rights investigator model?
- How has this changed, if at all, with the new regulation?

Notes:



Advanced Sexual Misconduct

ALEXANDER V. YALE (1980)

- Ronni Alexander, Margery Reifler, Pamela Price, Lisa Stone, and Ann Olivarius were the plaintiffs. The plaintiffs were students at Yale that brought forth a claim of a violation of Title IX claiming it was allowing discrimination on the basis of sex.
 - Alexander and Reifler alleged they were sexually harassed by a teacher/hockey coach and that Yale provided no process/procedure through which to complain.
 - Price alleged quid pro quo harassment stating a professor propositioned her by saying he would give her an A if she agreed to his sexual requests.
 - Stone alleged that her discussion with a fellow student, who disclosed being sexually harassed and who could not make a complaint, deprived her of a tranquil atmosphere necessary to her education.
 - Olivarius alleged that the lack of a procedure to file complaints of sexual harassment forced her to help those students and in turn she was threatened by those she investigated and that Yale failed to protect her from those students.
- Plaintiffs were represented by Catharine MacKinnon.
- MacKinnon argued that sexual harassment constituted sex discrimination and that Yale was in violation of Title IX as it was allowing discrimination on the basis of sex.
- **District Court upheld their legal argument ruling, “It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education.” However the plaintiffs lost their case. The District Court determined that Price was not propositioned for better grades. It found the other plaintiffs complaints to no longer be relevant as they graduated.**
- **However, Yale instituted a grievance procedure. As a result of Alexander v. Yale, most institutions began implementing grievance procedures for sexual harassment.**

Reflection

- What is your University’s grievance procedure for sexual harassment under Title VII?
- What is your University’s grievance procedure for sexual harassment under Title IX?
- Where/how is it published?
- How often are employees trained?
- Do you keep records of these trainings?

Notes:



Advanced Sexual Misconduct

MERITOR SAVINGS BANK V. VINSON (1986)

- Mechelle Vinson, 19, was hired in 1974 as a teller-trainee at the bank.
- Vinson claimed her supervisor, Vice-President Sidney L. Taylor continuously sexually harassed her by coercing her to have sex (40 – 50 times), demands for sexual favors at work, touching her in public, exposing himself to her, and raping her multiple times.
- Vinson said the behavior lasted for three years.
- Catharine MacKinnon (Alexander v. Yale) was Vinson’s attorney.
- Vinson and MacKinnon argued that Taylor’s behavior created a “hostile working environment” and was a form of discrimination under Title VII.
- Court wrote that the intention of Congress was “to strike at the entire spectrum of disparate treatment of men and women in the workplace.”
- Vinson’s case was the first instance of sexual harassment being recognized as “actionable” by the courts.
- **Courts ruled that the sexual conduct between Taylor and Vinson could not be deemed voluntary due to the hierarchical relationship of supervisor and subordinate in the workplace.**

Reflection

- How does your institution define sexual harassment under Title VII?
- How does it define hostile environment and quid pro quo harassment?
- Does your Title VII training include conversations on disparate treatment and disparate impact?

Notes:



Advanced Sexual Misconduct

FRANKLIN V. GWINNETT COUNTY PUBLIC SCHOOLS (1992)

- Christine Franklin was a sophomore at Gwinnett County Public School.
- Franklin alleged she was continuously sexually harassed by a teacher named Andrew Hill. Behavior included Hill initiating conversations of a sexual nature with Franklin, Hill grabbing and kissing Franklin in the school parking lot, Hill directing sexual comments at Franklin, and Hill and Franklin having sexual intercourse two to three times on school grounds.
- Franklin’s boyfriend told Dr. William Prescott, band director at the school of the complaint.
- Prescott discouraged Franklin from filing a complaint. Prescott tried to get Franklin’s boyfriend to discourage her from filing a complaint.
- After the complaint was filed, Hill resigned on the condition that all matters pending against him be dropped.
- After his resignation, the school closed the investigation.
- Hill filed suit under Title IX.
- **Supreme Court, in a unanimous decision, held that monetary damages are available under Title IX because it is presumed that violating a federal right calls for the use of appropriate relief as a remedy.**

Reflection

- In light of the new regulation’s requirement for actual knowledge and formal complaints, what kind of requirements, if any do you have for employees to report?
- What impact does “sweeping incidents under the rug” have on the institution’s community?
- What action would have been more appropriate by the school?
- What kind of remedies might repair the harm caused?

Notes:



Advanced Sexual Misconduct

GEBSER V. LAGO VISTA INDEPENDENT SCHOOL DISTRICT (1998)

- Alida Gebser, a high school student in the Lago Vista school district had a secret sexual affair with one of her teachers.
- Lago Vista had no official procedure for reporting sexual harassment.
- Lago Vista had no formal anti-harassment policy.
- After they were caught having sex, the teacher was arrested and fired.
- Gebser claimed she was harassed in violation of Title IX
- **Courts found for Lago Vista stating that two criteria must be met for a party to recover sexual harassment damages under Title IX:**
 - **Party must show that a school official, with the ability to institute corrective measures, knew of the forbidden conduct.**
 - **Must show that despite having knowledge of the conduct, school deliberately failed to respond in a proper manner.**

Reflection

- Does your institution have a consensual relationships policy?
- If the school had known about this situation, and it had been at an institution of higher education with legal adults, what ways might you evaluate whether conduct was wanted or unwanted in an ongoing relationship?

Notes:



Advanced Sexual Misconduct

DAVIS V. MONROE COUNTY BOARD OF EDUCATION (1999)

- Aurelia Davis sued the Monroe County Board of Education on behalf of her fifth grade daughter, Lashonda Davis.
- Lashonda was the victim of 8 separate instances of sexual harassment by a male classmate (“G.F.”)
- Instances occurred once every three weeks for about six months.
- Each time Lashonda told a teacher or her principal. Lashonda stated the school never took disciplinary action against G.F.
- Davis filed suit against Monroe County Board under Title IX alleging the harassment by G.F. against Lashonda had “interfered with her ability to attend school and perform her studies and activities” and that the school’s “deliberate indifference” created a hostile environment.
- **Court ruled that a school can be held liable under Title IX for deliberate indifference.**
- **Court held that such an action would be only for harassment that was so “severe, pervasive, and objectively offensive that it effectively barred the victim’s access to an educational opportunity or benefit.”**

Reflection

- What supportive measures does your institution have in place?
 - Change of residence halls?
 - Change of class/work schedule?
 - No contact order
 - Restricting a student from a residence hall?

Notes:



Advanced Sexual Misconduct

DEAR COLLEAGUE LETTER (APRIL 4, 2011)

Published fourteen years after the 1997 sexual harassment guidance, the 2011 Dear Colleague Letter inspired significant change in higher education.

- Released by the Obama and Biden administration.
- Referencing the Campus Sexual Assault Study: Final Report, the DCL reported that 1 in 5 women are victims of completed or attempted sexual assaults while in college.
- Referenced a school's obligation to respond to sexual harassment and sexual violence.
- Hostile Environment:
 - "Harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program.
 - "Single incident of sexual harassment may create a hostile environment if the incident is sufficiently severe."
- The reach of Title IX:
 - "Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip."
- Constructive Notice:
 - "If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects."
- Moving forward without a Complainant:
 - "Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation."
- Grievance procedures:
 - "Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution."
- Timeline:
 - "Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint."
- Equity in grievance procedures:
 - Equitable for both sides

Advanced Sexual Misconduct

- Advisors
- Appeals
- Responses to appeal
- Complainant has right to appeal
- Burden of Proof
 - Preponderance of the Evidence

Reflection

- What elements of the 2011 DCL were congruent with student conduct principals?
- What elements of the 2011 DCL were challenging for institutions of higher education?
- Some argued that the 2011 DCL resulted in a pendulum swing that eliminated due process for respondents; what do you think of this argument?

Notes:



Advanced Sexual Misconduct

DEAR COLLEAGUE LETTER (SEPTEMBER 22, 2017)

- Released by the Trump and Pence Administration with Betsy DeVos.
- Withdrew:
 - Dear Colleague Letter on Sexual Violence, dated April 4, 2011.
 - Questions and Answers on Title IX and Sexual Violence, dated April 29, 2014.

Reflection

- What impacts did you see this withdrawal of the 2011 DCL have on higher education response to sexual harassment?

Notes:



Advanced Sexual Misconduct

DOE V. UNIVERSITY OF CINCINNATI (2017)

- In September 2015, John Doe and Jane Roe, both students at the University of Cincinnati, met on Tinder and talked for two to three weeks before meeting in person.
- After meeting they went to Doe’s apartment where they engaged in sexual intercourse.
 - Doe stated it was consensual.
 - Roe stated it was not consensual.
- Three weeks later Doe filed a complaint with Cincinnati’s Title IX Office stating Doe sexually assaulted her the evening at his apartment.
 - Five months later, Cincinnati notified Doe of the allegation.
- At the Administrative Review Committee (ARC):
 - Roe did not appear.
 - Committee did not tell Doe that Roe would not appear.
 - Doe did not have an opportunity to question Roe.
 - The ARC used Roe’s prior statements provided to the Title IX office to make a decision.
 - There were no witnesses.
 - The ARC found Doe responsible and sanctioned him to a two year suspension, reduced to one year after appeal.
- United States Court of Appeals, 6th Circuit held:
 - **The University's disciplinary committee necessarily made a credibility determination in finding John Doe responsible for sexually assaulting Jane Roe given the exclusively “he said/she said” nature of the case. Defendants' failure to provide any form of confrontation of the accuser made the proceeding against John Doe fundamentally unfair.**
 - **Determined that allowing one party to review the statements of another party and respond to that is not equal to cross examination.**
 - **The court reasoned, “the ARC Hearing Committee was given the choice of believing either Jane Roe or Plaintiff, and therefore, cross-examination was essential to due process.”**

Reflection

- Where you aware of this case?
 - If so, did you make any adjustments to your process when this decision came out?
 - If so, what were they?
- In what ways do the new regulations go above and beyond the expectations set by this court?

Notes:



Advanced Sexual Misconduct

DOE V. BAUM (2018)

- John Doe and Jane Roe are students enrolled at the University of Michigan. They met at a “Risky Business” themed party held by Doe’s fraternity.
 - Doe is a member of a fraternity.
 - Roe is a member of a sorority.
- Doe asserted that he had consensual sex with Roe. According to Doe, he asked Roe if she wanted to have sex and she replied, “Yeah.” The two then had sex in his residence hall room.
- Per the Courts opinion, Roe remembered the night differently. According to her, she was drunk and unaware of her surroundings when she and Doe went to his room. While kissing near the doorway, she told Doe “no sex” before she “flopped” onto his bed. Id.at Pg. ID 325–26. Without asking, Doe undressed her and had intercourse with her while she “laid there in a hazy state of black out.”
- As part of the disciplinary proceedings the University met with Doe, Roe, and 23 witnesses.
 - Doe’s witnesses corroborated his story
 - Roe’s witnesses corroborated her story
 - Most credible was a female witness with no ties to Doe, Roe, or the Greek organizations.
- Doe was found not responsible.
- Roe appealed and the Appeals Board overturned the original decision and found Doe responsible.
- Doe filed with district court claiming Michigan’s disciplinary proceedings violated the Due Process Clause and Title IX as he was not permitted to cross examine Roe or any witnesses. Michigan filed a motion to dismiss which the district court granted in full.
- Doe appealed to the Us Court of Appeals for the 6th circuit. The Court held:
 - **When the university’s determination turns on the credibility of the accuser, the accused, or witnesses, that hearing must include an opportunity for cross-examination.**

Reflection

- What is meaningful cross examination in your opinion?
- What might this hearing have looked like with cross examination of all parties and ALL witnesses?
- How would you facilitate that kind of a hearing?

Notes:



Advanced Sexual Misconduct

Independent Learning Groups

Discussion Questions:

- Is there anything in your state law that may be in conflict with the new regulation?
 - If so, what are ways you are adapting?
- Have you reviewed the multiple rules, laws, case law, etc. to ensure your policy and process align?
- What partners/stakeholders are involved in your policy and process development that you are required to involve?
 - Who would it be beneficial to involve?
- Are there entities on campus that may need to be guided on interim practices that are no longer congruent with federal law?
 - Do you have entities that impose restrictions that may be considered punitive prior to a finding of responsibility?
 - How might you approach those conversations and resolve concerns?

Preparing for the virtual classroom: The requirement for live cross-examination by an advisor has been one of the most discussed provisions of the new Title IX regulations. While cross-examination provides a valuable opportunity for the parties to clarify testimony or impeach a witness, the anticipation of intense questioning tactics can cause some apprehension for all participants. These discussion questions are designed to help you identify concerns you may have and ways to address them (with some help from your group members). There will be further discussion of making relevancy determinations during today’s virtual classroom.

- Have you facilitated a cross-examination (or similar interaction) before?
 - If yes, please describe.
 - How did the experience make you feel?
 - If you experienced negative emotions, how did you manage them?
- Do you have any concerns about facilitating cross-examinations as required by the regulations?
 - If yes, what are your concerns?
 - Have you been able to identify ways to address those concerns? If yes, what are they?
- Have you considered how you might manage over-zealous advisors?

Notes:



Advanced Sexual Misconduct

Virtual Classroom

Questions

1:00 – 1:15pm

Notes:

Hearings – Components and Strategies

1:20 – 3:20pm

Learning Outcomes

1. Participants will be aware of multiple hearing structures
2. Participants will have baseline knowledge to create structure of their own

Before the Hearing: Notice of Investigation – 34 CFR Requirements

Requirement	Already Included	Need to Include
Grievance process in compliance with TIX		
Informal resolution process		
Allegations of sexual harassment <ul style="list-style-type: none"> ○ Sufficient detail to prepare if known <ul style="list-style-type: none"> ▪ Identities of parties ▪ Date, time, location of incident 		
Statement that respondent is presumed not responsible		
Allowed advisor of choice who may be an attorney		
Provision in code prohibiting false statements		
Additional notice if allegations added		
*How to request accommodations		
*Items required by state law (i.e. Texas – notice that concealed handguns are not allowed)		

*Items not required by regulation, but may be considerations



Advanced Sexual Misconduct

Are there adjustments you may need to make to your investigations to provide sufficient information for your decision makers?

Notes:

Notice and Scheduling of Hearing Date

Included in Notice	Yes	No
No new allegations relating to sexual harassment (all included in prior notices through investigation process)		
New allegations - not relating to sexual harassment		
Rules and/or process include 10-day review period between final draft of investigation to parties & advisors to hearing date		
Deadlines included for submitting new/additional information		
Reminder about advisor		
Reminder about provision in code prohibiting false statements		
Reminder that respondent is presumed not responsible until resolution		
Last option to opt into informal process		

How do you provide notice?

- How do you know it was received?
- What if a letter wasn't retrieved? How do you ensure notice?
- What if people are ghosting you?

Notes:



Advanced Sexual Misconduct

Things I need to consider in scheduling a pre-hearing meeting:

My institution uses/plans to use

- an individual decision maker a panel

Because:

Training for decision maker(s) must include:

- The definition of sexual harassment
- The scope of the recipient’s education program or activity
- How to conduct a hearing
- How to serve impartially, including by avoiding prejudgment of the facts at issues, conflicts of interest, and bias
- Technology used in hearings
- Issues of relevance of questions and evidence
 - including when sexual history is applicable

- 34 CFR 106.45(b)(1)(iii)

How are your decision makers being trained?



Advanced Sexual Misconduct

Advisor

- What expectations do you have set for your advisors?
- Who will compose your pool or available university provided advisors?
 - Will you train those folks?
 - If, so what does that include?
- Will you reschedule a hearing to accommodate for advisors’ schedules?
- What happens when you or a party excuse their advisor mid-hearing?
- Will you ask advisors to sign a non-disclosure agreement?

Witnesses

We allow in person

- First-hand witnesses
 Credible hearsay witnesses
 Any hearsay witness
 Character witnesses
 Investigator(s)
 Expert
 Other: _____

Some questions to consider

- What do you need to discuss with witnesses at the beginning of the investigation process?
- Do witnesses need a case manager/advisor?
- Is there some kind of witness preparation that happens?
 - Is this in the pre-hearing meeting?
 - Who does this?



Advanced Sexual Misconduct

Cross Examination

Notes:

Horizontal lines for notes

Physical Space

Notes:

Horizontal lines for notes

Hearing Outcomes

Table with 3 columns: Requirement, Already Included, Need to Include. Rows include Allegations, Procedures completed to date, Findings of fact supporting the decision, etc.



Advanced Sexual Misconduct

Appeal Basis

Requirement	Already Included	Need to Include
A procedural irregularity that affected the outcome of the matter		
New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter		
The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter		
Other:		

Administration of appeals

Written Only		In Person	
PROS	CONS	PROS	CONS



Advanced Sexual Misconduct

Relevancy

3:30 – 5:00pm

Learning Outcomes

1. Participants will understand factors to consider regarding relevancy.
2. Participants will be able to provide rationale for disallowing questions.

Slide 5

Caveat

- As an advanced track, relevancy content will focus on the requirements of the new regulations and special issues.
- We will briefly discuss some foundational aspects of the topic, but will not go in depth. To further explore the building blocks of managing Title IX cases, we encourage you to attend ASCA's Sexual Misconduct Institute this fall.



Slide 6

Roadmap

1. Big picture implications
2. TIX requirements + what remains unclear
3. Practitioner's tips & considerations

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Slide 7

Big Picture Implications

- Except in VERY limited circumstances, all relevant evidence will be allowed to become a part of the record.
- Decision-maker is still responsible for weighing each piece of relevant evidence and testimony and assessing its credibility.

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Relevancy (General) – TIX Requirements

- Requires objective evaluation of all relevant evidence – including **inculpatory & exculpatory** evidence.
 - “All” relevant evidence
 - Regulation commentary: Does not permit endless delay or require that parties or institution perform an exhaustive search for all evidence related to the case.
 - It is what a thorough investigation effort can gather within a reasonably prompt time frame.
 - Does not require “objective” (i.e. corroborating) evidence to substantiate parties’ or witnesses’ statements – must objectively evaluate the weight and credibility of all the relevant evidence that is available (85 Fed. Reg. 97, commentary, 2020).
- Credibility determinations cannot be based on status as a complainant, respondent, or witness.

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Standard for Relevance – TIX Requirements

- Regulations do not define relevance– “the ordinary meaning of the word should be understood and applied.” (85 Fed. Reg. 97, commentary FN 1018, p. 30247, 2020).
- Sample definitions/framework
 - **Relevance** – The fact, quality, or state of being relevant; relation or pertinence to the issue at hand (Black’s Law Dictionary, 2004).
 - **Relevant** – Logically connected and tending to prove or disprove a matter in issue; having appreciable probative value – that is, rationally tending to persuade people of the probability or possibility of some alleged fact (Black’s Law Dictionary, 2004).

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Standard for Relevance – TIX Requirements

Sample framework (two-part test)

1. The information is directed to some fact that is important to the issues in the case. This is largely driven by the allegations.
2. The information tends to make the existence of a fact more or less probable. This is viewed in totality of the circumstances and takes into consideration logic, experience, and the ways of human behavior (Mauet, 2020).



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Standard for Relevance – TIX Requirements

- Specific evidentiary rules or standards regarding admissibility have not been adopted.
 - Does not adopt the Federal Rules of Evidence (FRE) or another set of evidentiary rules.
 - Does incorporate some concepts that are included in the FRE.
- However, there is a clear focus on requiring that all relevant evidence be considered, absent a few limited exceptions.

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Excluding Relevant Evidence for Policy Reasons

- No required evidentiary standard, but if one is adopted, it "must respect the relevance standard" (85 Fed. Reg. 97, commentary, p. 30248, 2020).
 - Meaning, an institution CANNOT adopt a rule excluding relevant evidence because it
 - may be unduly prejudicial,
 - concern prior bad acts, or
 - constitute character evidence. (85 C.F.R. 97, p. 30248)
- This may differ from some institutions' current practice.

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Excluding Relevant Evidence for Policy Reasons

- Rape shield protection
 - Complainant's prior sexual history is deemed irrelevant EXCEPT
 1. If offered to prove that someone other than respondent committed the alleged conduct
- OR
- 2. If related to specific instances of complainant's prior sexual behavior with respondent and offered to prove consent.

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Excluding Relevant Evidence for Policy Reasons

- Legally recognized privilege exists
 - Cannot "require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, UNLESS (emphasis added) the person holding such privilege has waived the privilege" (85 Fed. Reg. 97, p. 30576, 2020).
 - Commonly recognized privileges*
 - Attorney-client privilege
 - Marital privilege
 - Religious privilege
 - Doctor-patient privilege
 - Counseling and psychological privilege
 - Accountant-client privilege

*In most states, the exact scope of the privileges and any exceptions are defined by statute, so please review the laws of your state and/or confer with your institution's general counsel regarding scope and applicability.

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Excluding Relevant Evidence for Policy Reasons

- A party's medical or psychological treatment records cannot be used without their voluntary, written consent.
- Statements not subject to cross-examination in post-secondary institutions cannot be relied on by the decision-maker(s).
- Duplicative evidence can be excluded (85 Fed. Reg. 97, commentary, p. 30377, 2020). (CAVEAT)

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Excluding Cross-Examination Questions

- Only relevant questions may be asked.
- Before answer is provided, the decision maker must:
 1. determine whether the question is relevant **AND**
 2. explain any decision to exclude a question as not relevant.
- Prepare for:
 - Real-time challenges
 - Hostile advisors and/or parties

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Excluding Cross-Examination Questions

- If questions or evidence is relevant, but concerns a party's character or prior bad acts, the decision maker(s) **cannot exclude or refuse to consider the relevant evidence** (85 Fed. Reg. 97, 2020).
 - Evaluate evidence for weight and credibility
 - Treat parties equally in evaluation of character evidence

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Excluding Cross-Examination Questions

- **Setting expectations** – Regulations allow for adoption of codes of conduct and rules of decorum for parties, advisors, and witnesses.

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Relevancy Group Discussion

Discussion Questions

These discussion questions below are designed to help you identify issues related to relevance under the new Title IX regulations. Review the questions before the Virtual Classroom session and prepare to discuss in your Independent Learning Group.

1. Sadie wants to offer documentation from her physician’s office that she had a SANE exam completed the morning after Matty sexually assaulted her. Sadie says that this is proof that the assault occurred and, therefore, a violation ABC University’s Title IX policy occurred. Matty denies that an assault occurred – they assert that the couple didn’t engage in sexual intercourse on the date in question.
 - Is proof of the SANE exam relevant to the allegations? Why or why not?
 - If so, what would you consider in weighing its probative value and assessing its credibility?
2. Sadie wants to offer documentation from her physician’s office that she had an abortion four weeks after she alleges Matt sexually assaulted her. Sadie says that this is proof that the assault and, therefore, a violation ABC University’s Title IX policy occurred. Matt denies that an assault occurred – he asserts that the couple had consensual sex and that they both agreed to the abortion after learning that Sadie was pregnant.
 - Is the documentation of the abortion relevant to the allegations? Why or why not?
 - If so, what would you consider in weighing its probative value and assessing its credibility?
3. Terrance reported that his now ex-boyfriend Cade hit him with a baseball bat during an argument. Terrance wants to provide testimony about Cade’s prior violation of the university’s relationship violence policy. When they first started dating, Cade sent Terrance a text message with all of the details of the prior incident.
 - Is this testimony relevant to the allegations? Why or why not?
 - If so, what would you consider in weighing its probative value and assessing its credibility?
4. In considering determination of responsibility for dating violence, Aisha wants to provide testimony about ex-girlfriend Michaela’s prior violation of the university’s alcohol and drug student rules. Aisha served as Michaela’s advisor during Michaela’s student conduct hearing regarding the alcohol and drug violations.
 - Is this testimony relevant to the allegations? Why or why not?
 - If so, what would you consider in weighing its probative value and assessing its credibility?

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Evaluating Weight & Credibility of Relevant Evidence

- Decision-maker should weigh each piece of relevant evidence and testimony and assess its credibility.
- §106.45(b)(1)(iii): Flexibility is allowed in type and scope of training on assigning weight or credibility to certain types of evidence.
 - Training should promote impartiality and treat complainants and respondents equally.
- §106.44(b)(2): When enforcing regulations, DOE will refrain from second guessing a determination of responsibility based solely on whether DOE would have weighed the evidence differently.

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Evaluating Weight & Credibility of Relevant Evidence

- Common types of evidence
 - Witness testimony
 - Lay witnesses
 - Expert witnesses
 - Character witnesses
 - Considerations for certain types of hearsay
- Documents
 - Drawings
 - Printouts of phone screenshots, emails, social media direct messages
 - Medical records (remember voluntary, written consent requirement)

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Evaluating Weight & Credibility of Relevant Evidence

- Common types of evidence, cont'd
 - Photos/videos
 - Physical evidence
 - Replicas/models
- Authentication considerations

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Drafting Rationales for Conclusions

- A written determination regarding responsibility is required.
- Must lay out the evidentiary basis for conclusions reached in the case (i.e. show your work).
 - Could someone clearly identify how and why decisions were made?

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Questions

Case Study Relevance Table
Full case study found in Appendix B.

Questions for the Complainant

Question	Allowed?	Rationale
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	



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	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	



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Questions for Respondent

Question	Allowed?	Rationale
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	



Day 3: Wednesday, July 22, 2020

Virtual Classroom Preparation and Independent Learning

Complete prior to Wednesday Virtual Office Hours (p. 79 – 95)

Stalking and Threat Assessment

Learning Outcomes

1. Participants will understand varying stalking typologies and behavioral risk indicators.
2. Participants will be able to apply their understanding of stalking to a case study.

Information in this section of the workbook comes from presentation by Dr. Anna Satterfield, Licensed Psychologist, that was later modified and presented by Dr. Kristen Harrell.

Overview

- Understanding Stalking
- Stalking Statistics
- Stalking typologies
 - Zona et al. typology
 - Mullen et al. typology
 - Mohandie et al. RECON typology
- Behavioral violence risk indicators
- Stalking investigation considerations
- Stalking risk assessments and resources

Understanding Stalking

Definition under 34 U.S.C. 12291(a)(30):

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) fear for his or her [their] safety or the safety of others; or
- (B) suffer substantial emotional distress.

Stalking as a crime generally contains 3 elements:

- Pattern of unwanted following or harassing
- Credible threat
- Induction of fear in the victim or family of the victim



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Stalking Statistics

- “Less than 1/3 of states classify stalking as a felony upon first offense.
- More than 1/2 of states classify stalking as a felony upon second or subsequent offense or when the crime involves aggravating factors.
- Aggravating factors may include: possession of a deadly weapon, violation of a court order or condition of probation/parole, victim under 16 years, or same victim as prior occasions. For a compilation of state, tribal,”

Stalking Resource Center (2015).

General Statistics and Stalking Information

- 2 – 13% of males victimized
- 8 – 32% of females victimized
 - Women are the target of 80% of cases
- There is limited research on victimization of non-binary individuals
 - In a study by Langenderfer-Magruder, Walls, Whitfield, Kattari, & Ramos (2017), a total of 15% of participants experienced stalking victimization – LGBTQ participants experienced the highest prevalence through this difference was not statistically significant
- The average duration of a stalking situation is 2-years;
- Most victims know their stalker;
- 1/3 of cases involve physical violence; and
- only ½ of cases are reported to police.

Typically:

- Individuals who stalk public figures are more ill and less violent
- Homicides in stalking cases are rare: ~2% of cases
- Violence against 3rd parties typically occurs when that third party attempts to impeded a stalkers access to their victim
- Stalkers may use weapons or property destruction as a mechanism for intimidation and control. Property damage may also be a means to invade the privacy of the victim.

General characteristics of individuals who engage in stalking:

Male

- Fourth decade of their life
- Prior psychiatric history
- Prior drug abuse
- Prior criminal history
- Preoccupied with the victim of their stalking



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What implications might this profile have for our work with traditional student populations?

Tactics of this profile of stalker:

- Wants to engage in hyper-intimacy
- Engages in regular proximity and surveillance
- Invades
- Utilizes a proxy to engage in pursuit
- May engage in intimidation or harassment
- May engage coercion or constrain subject
- Is aggressive

Female

- Typically single
- Mid-thirties
- Some kind of psychiatric diagnosis: mood disorder or personality disorder
- Pursuit of victims is most likely benign communication sent through multiple means

Statistics and information relating to female stalkers:

- Make up 15 – 20% of stalkers
- 24% of female stalking victims are stalked by another female
- 43% of male stalking victims are stalked by a female
- Female stalkers have comparable rates of violence compared to male stalkers
 - Though female stalkers are less likely to threaten men, they are just as likely to engage in assault
- Typically there is little history of
 - Violent crimes
 - Substance abuse
- Female stalkers are more likely than men to:
 - Pursue professional contact
 - Pursue a victim of the same gender
- Female stalkers tend to be motivated to establish intimacy with their victims
 - They don't necessarily need proximity for this
 - Anger and abandonment rage are the most common emotions present

Impacts on victims

- Impacts are severe and chronic
- 1/3 of victims will develop psychiatric diagnosis



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- Lives are severely disrupted
- Reporting can be difficult and marginalizing
 - Male victims are often dismissed by law enforcement and met with skepticism
 - Female victims most often had their sexual orientation questions when their stalker was female
 - LGBTQ+ folks are even less likely to report
- Victims will often:
 - Minimize or deny that stalking is occurring
 - Attempt to resolve the issue themselves
 - Destroy evidence
 - Attempt to initiate contact with the stalker in order to “reason” with them

A central question that is raised with stalking is why would you choose to pursue someone who shows no interest in you? (*other than terrible narratives in media about how romantic pursuit it*)

Psychological Evaluation and Diagnoses

- There is no current stand-alone diagnosis for individuals who engage in stalking behavior
- There are variable behaviors that stalkers may engage in and they do not typically fall within one diagnostic criteria
 - When they do fall into one diagnostic criteria, there is a range of diagnosis that apply. Some examples are:
 - Bipolar disorder
 - Schizophrenia
 - Borderline personality disorder
 - Narcissistic personality disorder
- The crux of the behavior comes to the pathology of their attachment
- Prominent emotions present are anger and jealousy
 - These emotions may be managed through minimization, denial, projection of blame, etc.
- There are some investigative studies into potential biological contributions to stalking behaviors (these are not discussed in this workbook)

Typologies

The following is information regarding stalking typologies. As you read through this information, consider how you may have seen or may see this behavior exhibited by students. In what ways might social media be utilized under these typologies?

Zona Stalker – Victim Typology

Simple Obsessional

- Majority of the stalking cases
- Stalker/victim have prior knowledge of each other, may have had prior relationship of some kind
 - More specifically, may or may not have had prior intimate relationship
- Motivated to coerce victim back into previous relationship or exact revenge
- Highest potential to result in violence of the Zona types



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Love Obsessional

- 30% of stalking cases
- Stalker/victim have no prior relationship
- May be “obsessed fan,” this is a typical type that victimizes celebrities
- More likely to have persistent and severe mental health disorder than other types
- Less likely to result in violence than other types

Erotomaniac Stalking

- 10% of stalking cases
- Delusional belief that the victim is in love with the stalker
- Overlaps with diagnosis of delusional disorder: erotomaniac type
- Majority of this classification are categorized as female
 - Stalkers are often younger females
 - Victims are often men of high socioeconomic status

False Victimization Syndrome

- 2% of stalking cases
- “Victim” alleges stalking case, but in fact talking is not occurring
- The victim may or may not know the accused stalker
- The person claiming to be a victim often has a personality disorder
- Motivation for false claims may be attention seeking or delusional belief

How have you seen or might you see Zona’s typologies demonstrated within your student population?

In what ways might social media be utilized by these varying types?



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Mullen's Stalker Typology

Mullen's typology is characterized by the precipitating event for the stalking, the relationship between the stalker and their victim, the motivation for the stalking, and reasons for maintaining the stalking behavior.

Rejected Stalker

- Precipitating event: The breakdown of a close relationship
- Relationship: Usually a former intimate relationship
- Motivation: Reconciliation or revenge for rejection
- Reasons for maintenance: The stalking behavior substitutes for the relationship itself

Resentful Stalker

- Precipitating event: perceived injustice, mistreatment, or humiliation
 - Can arise out of severe mental illness (paranoid beliefs about the victim)
- Relationship: Strangers or acquaintances
- Motivation: Desire for revenge
- Reasons for maintenance: The stalking behavior creates feelings of power and control over the victim
 - The stalker may present themselves as the victim

Intimacy Seeking Stalker

- Precipitating event: Loneliness, lack of a confidant
 - Fueled by severe mental illness (delusional beliefs about victim)
- Relationship: Strangers or acquaintances
- Motivation: To establish emotional connection and an intimate relationship
- Reasons for maintenance: Gratification through the belief that they are closely linked to their victim

Incompetent Suitor

- Precipitating event: Loneliness or lust
- Relationship: Strangers or acquaintances
- Motivation: To get a date or short-term sexual relationship
 - Usually stalk for only brief periods of time
- Reasons for maintenance: Blind or indifferent to the distress of the victim

Predatory Stalker

- Precipitating event: Presence of deviant sexual practices and interests
- Relationship: Strangers – stalkers are typically male and victims female
- Motivation: To obtain sexual gratification
- Reasons for maintenance: May enjoy a sense of power and control that comes from targeting an unsuspecting victim



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How have you seen or might you see Mullen’s typologies demonstrated within your student population?

In what ways might social media be utilized by these varying types?

Mohondie et al. RECON Typology

“Mohondie and associates hypothesized that the “motivation” of the stalker is multi-determined and therefore, using that dynamic as the primary definition in determining typology would limit its utility. In addition, determining risk of violence is critical in these cases. The authors also noted that stalkers often transitioned between the different “typologies” depending on how the relationship changes. In addition, some typologies focused on clinical labels, again a dynamic that can change. Often, law enforcement does not necessarily have enough information to make a clinical diagnosis which makes using the typologies difficult.

These authors wanted something that was more behaviorally based and useful in a variety of settings and professions. And, if the typology was behaviorally based, additional research could be conducted to create a better understanding of these issues. So they proposed the typology based on a) the definition of the perpetrator’s relationship with the victim and b) the context of the pursuit. Therefore, this is relationship and context based.

Key domains a) nature of the previous relationship between stalker and victim (RE) and context in which this relationship was based (CON) = RECON” Satterfield (n.d.)

Type I: Previous Relationship - Private Figure Context Salient (RE)

(CON)

- Intimate context: marriage, cohabitating, dating/sexual (intimate)
- Non-intimate context: employment-related, affiliative/friendship, customer/client (acquaintance)

Type II: No Prior Relationship or Limited/Incidental Contact (RE)

(CON)

- Public figure context: pursuit of a public figure (victim)
- Private stranger context: pursuit of a private stranger (victim)

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The Mohandie et al. study looked at 1005 cases. General information collected from this study:

- 32% were private case files
- 68% were criminal justice case files
- Had people rate which typology they would choose based on these files
 - Inter-rater reliability was 0.95
- Stalkers:
 - 86% male, 14% female
 - 85% Caucasian, 12% African American, 10% Hispanic, 2% Asian, 2% Other, 18% Unknown
 - 76% had mental health issues
 - 46% clear disorder
 - Common disorders included schizophrenia, schizoaffective disorder, personality disorders, mood disorders, substance abuse disorders
 - 16% psychotic disorder
 - 13% psychotic symptoms at the time of offense
 - 25% suicidal ideation/gestures
 - 32% engaging in substance abuse at the time of the incident
 - 32% had domestic violence history with the subject
 - 67% pursued their victim once pre week, many daily
 - Multiple modes of approach were used with their victims
 - 33% had stalked previously
 - 45% violence rate with most of the violence aimed at the victim
 - 30% violence to victim
 - 26% property damage
 - 7% violence to 3rd party
 - 2% killed or injured the victim's pet
 - Average number of threats was 5
 - Weapons were used to harm or threaten in 20% of cases
 - 43% Knives
 - 30% Other objects
 - 18% Firearms
 - 9% Cars
 - Homicide rate was 0.5%
 - 50 times more than the national average

Type I: intimate:

- 50% of sample
- Most violent
- Most occurrence of criminal backgrounds
- Frequently approach victim and escalated quickly
- Most likely to use a weapon
- Rarely psychotic
- 11% stalked prior to engaging in the intimate relationship
- Most likely to re-offend quickly, average re-offense occurred within 2 months



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Type I: Acquaintance

- 13% of sample
- Half as likely to assault victim than intimate context
- Pursuit patterns start sporadic and become relentless – average pursuit is 2 years
- Seeking to initiate a relationship
- Many had personality disorders

Type II: Public Figure

- 27% of sample
- This category had the highest number of females compared to other groups (though males still the majority)
- Less likely to threaten or be violent
- Expressing desire for love or help
- Tend to be older
- Less criminal history
- Most likely to be psychotic

Type II: Private Stranger

- 10% of sample
- Primarily mentally ill men
- Less likely to have substance abuse and criminal history compared to Intimate
- Approach is direct and proximity based – frequent followers
- Just want to communicate with their victim
- Half threaten
- A third will be violent to victim or property
 - 14% will assault

How have you seen or might you see the RECON typology demonstrated within your student population?

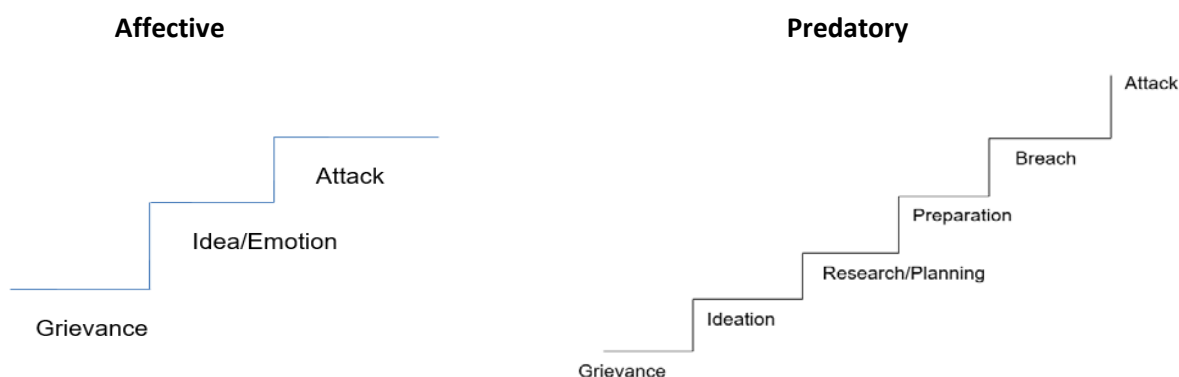
In what ways might social media be utilized by these varying types?

Advanced Sexual Misconduct

Behavioral violence risk indicators

- Age under 30 years
- Less than high school education
- Threats toward the victim
- Prior intimate relationship
- Revenge motivation
- Psychotic Disorder
- Personality Disorder
- Substance Abuse history
- Criminal History

Affective vs. Predatory Violence



For affective violence:

“Nature of violence is generally affective when the stalker and the victim are prior sexual mates. Violence is reaction to perceived threat generally rejection” (Satterfield, n.d.). There is an intense autonomic arousal – flushed skin, muscle rigidity, adrenaline release, constricted blood vessels, increased blood pressure, etc. The stalker experiences emotions subjectively, anger, fear, or both. Affective violence is reactive and usually immediate violence in the presence of internal or external perceived threat. The goal for affective violence is often threat reduction. Within domestic violence this may be a displacement of aggression. Affective violence is usually time limited to seconds or minutes.

In observing people who may be a threat of engaging in affective violence, one may observe:

- Clenching fists or jaws
- Pacing or impatient behavior
- Sitting on the edge of their chairs
- Slamming doors or banging fists
- Being jumpy or easy to startle

For predatory violence:

Predatory violence is exceedingly dangerous. There is minimal autonomic arousal – physiologically the perpetrator is not fired up when the violence occurs. There is often no conscious emotion, the violence is predominantly cognitive and dependent on thought or wish. The violence is planned and it is purposeful. There is no perceived imminent threat, there is no displacement of the target, and no time-limited sequence of violence.



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Lethality indicators

- Frequency of and severity of violence is escalating
- Frequency of intoxication is increasing
- Forced or threatened sex acts are increasing
- Presence of a new relationship for either person
- Proximity of parties (look at work and home)
- Increased feelings of suicidality or homicidality

Questions to consider:

- In multiple typologies there was reference to shame, humiliation, or a perceived wrong, which could trigger affective violence or stalking behavior, these are called dramatic moments – as you think about your supportive measures, investigation processes, and remedies, what are ways you could limit these dramatic moments?
- When thinking about investigations into violence behaviors, what may be some questions you could ask in order to determine whether the violence was affective or predatory?
- What else might you look for?
- How might you help a complainant navigate a stalking situation knowing the typologies and risk indicators?

Investigation Considerations

- Policy and Clery thresholds
 - Fear and Emotional Distress - how are you determining these facets of the rule?
- Many times folks don't realize is stalking because it's not stereotypical
- Be careful about perceived under or over reaction by complainants
 - There may be assumptions about motive
- Engage your support measures
- Navigate participation – how might proximity between the stalker and victim escalate or de-escalate the situation?
- Records – what does everyone have access to?

Notes:



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Suggestions for response:

- Police should be summoned after more than one unwanted intrusion that creates anxiety
- Treatment should be offered for both perpetrator and victim
- Segregation/incarceration may be necessary
 - Are you able to do that through contact and/or premise restrictions?
- Conduct periodic violence risk assessments
- Recognize “dramatic moments”
- Team approach is preferred, a coordinator of this team is a must
- Be aware that victims are primarily responsible for their safety:
<https://www.youtube.com/watch?v=Pg7-X5a9GsA> (@ 9:42)
 - This can be exhausting
- Document and record all incidents
- Victim should not initiate contact
- Restraining orders/protective orders can help

Stalking risk assessments and resources

Guidelines for Stalking Assessment and Management (SAM)

<http://proactive-resolutions.com/shop/guidelines-for-stalking-assessment-and-management-sam/>

The Stalking Risk Profile: Guidelines for assessing and managing stalking situations (SRP)

<https://www.stalkingriskprofile.com>

The Stalking Resource Center

<http://victimsofcrime.org/our-programs/stalking-resource-center>

Understanding Stalking Dynamics and Implications for Transgender Individuals and Communities

https://www.youtube.com/watch?v=1ZhaUgQCxw&feature=player_embedded

Final Thoughts

- Research is still limited in this area
- Multiple typologies exist
- Defining stalker type is key
 - Important for assessing risk of violence
 - Identify most effective intervention strategies
 - Identify and develop appropriate treatment strategies



Advanced Sexual Misconduct

Sexual Harassment and Stalking 2-Part Case Study

PART 1

Sawyer and Amari attend Harhead University (HU) where they live on the same residence hall floor. Sawyer and Amari have class together and are a part of the same student organization. This membership in the same class and the student organization have resulted in Sawyer and Amari interacting with each other on a fairly regular basis, but neither of them would say they are close. Their interactions reduced in frequency when Sawyer started studying with someone else.

Amari reports:

Amari was coming back from class and Sawyer followed Amari into Amari's room and closed the door. Sawyer started asking Amari about Amari's weekend. Sawyer acquired an erection during this time and commented on it to Amari. Sawyer started asking Amari about Amari's sexual history and whether Amari had ever given anyone a blow job. Amari indicated Amari wanted to be more connected to Amari's faith tradition and felt that engaging in sexual contact of that nature contradicted this faith. Sawyer persisted with asking questions about Amari's sexual history and called attention to Sawyer's erection. During this time, Sawyer opened Sawyer's pants and touched Sawyer's penis. Amari repeatedly told Sawyer to go back to Sawyer's room and sleep. Sawyer walked to Amari's door, locked it, looked in the mirror, and asked Amari if Amari wanted to see Sawyer's penis. Amari stated "no" and attempted to change the subject.

Sawyer left the room. Sawyer later returned to the room and stated, "you're not going to tell anyone about this, right?"

Amari reports feeling very uncomfortable with the interaction that occurred in Amari's room. Amari indicated doing poorly on three tests the week of the incident because of recurring thoughts about the incident.

Amari has reported the incident.

Sawyer reports:

Sawyer was coming back from working out. On the way to Sawyer's room, Sawyer stopped by Amari's room, knocked, requested to come in, and was granted access. Upon entering Amari's room, Sawyer asked Amari about the weekend. Amari then asked how a recent date Sawyer went on had gone. They proceeded to discuss prior dating relationships and then Sawyer asked Amari if Amari had done anything sexual. Amari indicated Amari had good head game. Sawyer then acquired an erection. Sawyer adjusted Sawyer's penis. Amari noticed and said, "really, Sawyer?" Amari then asked how often Sawyer gets an erection. Sawyer indicated erections occur daily and that they don't go away unless taken care of. Sawyer asked Amari if Amari would ever consider giving Sawyer head. Amari said "no." On the way out of the room Sawyer indicated sarcastically that if Sawyer ever achieved an erection Sawyer would come back to the room and Amari could make it go away. Amari sarcastically responded "anytime, I'm here."

Sawyer indicated Sawyer never opened Sawyer's pants and look at Sawyer's erect penis. Sawyer indicates Sawyer never offered to show Amari Sawyer's penis. Sawyer indicated that Amari was actively engaged in the conversation and did not ever look or otherwise seem uncomfortable with the conversation.



Advanced Sexual Misconduct

PART 2

As a result of the incident above, Sawyer was removed from the student organization that both Sawyer and Amari had been members of. After this removal, one of the key student's in that organization got to know Sawyer and believed Sawyer should be let back in. This key student convinced others in the organization to allow Sawyer to return and be reinstated into the organization.

It is now two months later. Sawyer has moved to a different residence hall and has a new roommate. The roommate, Kamryn, filed a report about Sawyer.

During the past week Sawyer asked to borrow Kamryn's phone. Kamryn asked what it was for and Sawyer indicated wanting to take a picture of something. Sawyer uses Kamryn's phone to take a picture of Sawyer's cellphone screen. Sawyer does a few other things on Kamryn's phone and then returns the phone to Kamryn. Kamryn believed this was all a little strange so checked the phone for Sawyer's activities. Kamryn found three photos of an individual that had been posted on Snapchat. Kamryn saw that Sawyer had taken these photos, texted them to Sawyer, and then deleted the photos from the text message and from the photos folder. Kamryn found the photos in the phone's deleted files. Kamryn did not recognize the person in the pictures, but decided to report the situation as Kamryn was concerned and did not want to be affiliated with the situation.

The photos were determined to be photos of Amari. One photo had a caption "They couldn't handle a strong Harhead, so I dropped them." Notice of this incident went to the student organization and Sawyer was immediately removed from that organization.

Sawyer Reports:

Sawyer indicated Sawyer saw these pictures of Amari on a mutual friend's snapchat feed. Sawyer believed the photo with the caption was referencing Sawyer. Sawyer felt that Amari was taking a shot at Sawyer and Sawyer wanted to show Sawyer's mom to see what to do. Sawyer felt that maybe this is something that might need to be reported. Sawyer indicated that if a screen shot had been taken that would have sent a notification to the mutual friend and Sawyer did not want the friend to get involved. This is why Sawyer used Kamryn's phone to capture the photo. Sawyer showed the photo to Sawyer's mom and Sawyer's mom told Sawyer to let it go.

When asked why multiple photos were taken Sawyer indicated that Snapchat has a scroll feature and that it was moving quickly. The multiple photos were taken to make sure the one in question was picked up.

When asked about other options for determining whether this photo was problematic, Sawyer indicated that the photos go away in 24 hours and Sawyer needed to retain the photo to show Sawyer's mother. When asked why Sawyer didn't request assistance from someone else in the organization or on the residence hall floor, Sawyer indicated that Sawyer could not trust anyone and that Sawyer did not know who to trust. Sawyer indicated Sawyer's mother was the only one who could be trusted.

When confronted with the possibility that the caption was not about Sawyer, Sawyer insisted that it was. Sawyer was very concerned about Amari's choice to post this photo referencing Sawyer and the damage that this could cause.



Advanced Sexual Misconduct

Independent Learning Groups

Discuss stalking reflections and case study

Virtual Office Hour Preparation

What questions or topics of conversation might you want to discuss during office hours?

Notes:

Mindfulness Exercise

Complete Mindfulness Exercise – see page 9

Connecting to Wednesday Office Hours

If you wish to connect with any of the faculty during the 1:00 – 5:00pm (EST) time, please enter the same Zoom meeting you have been accessing throughout the week. If the person you are looking for is not there, we will get ahold of them for you.



Day 4: Thursday, July 23, 2020

Virtual Classroom Preparation and Independent Learning

Complete prior to Thursday Virtual Classroom (p. 96 – 102)

Consent Research

Learning Outcomes

1. Participants will be able to understand basic principles of sexual script theory and its impact on sexual misconduct resolution.
2. Participants will be able to evaluate nonverbal consent communication as it applies sexual misconduct cases.

This section provides information and context for a study regarding nonverbal indicators of sexual consent. As many policies include affirmative consent definitions which require the clear presence of consent in sexual interactions between students and many of those policies allow for nonverbal communication of that consent, it is helpful to understand what nonverbal consent looks like. There are limited studies on what consent is though many studies on what consent is not. This section of the workbook is intended to provide some information to assist participants in making consent determinations in their practice.

Study Abstract

“Particular attention has been paid to the issue of sexual assault on college and university campuses in the United States in the past 6 years. This attention has spurred action by institutions of higher education to comply with federal mandates through increased education for students, policy changes, and training for faculty and staff. One of the significant areas of attention across the country has been development of affirmative consent policies, including signaling consent through the use of nonverbal communication. In order to understand the phenomenon of nonverbal consent, this phenomenological qualitative study was conducted utilizing individual interviews and focus groups to obtain perspectives from current traditional-age college students at a public 4-year university in the southwest. All participants were cisgendered and had previously engaged in a mutually wanted sexual experience.

Participants noted challenges in answering questions about how one indicates “being into” sex. Despite these challenges, they identified multiple nonverbal behaviors that they believed indicated consent. Behaviors identified were categorized based on level of invasiveness, as well as level of strength, as indicators of consent, based on participant contributions and existing research. Lack of resistance was discussed at length as an indicator during individual interviews and focus groups. Participants expressed a variety of opinions regarding what lack of resistance means. Context was important to participants when identifying whether a behavior indicates consent. The collected and analyzed data may assist higher education administrators and other practitioners in educating and otherwise engaging with students on the topic of nonverbal consent. Furthermore, this study may assist researchers in gaining depth in their work through increased detail of language uncovered during the study. While this study contributes to a growing body of knowledge on this topic, further research providing greater depth is needed.”

(Harrell, 2017)



Sexual Script Theory

Sexual script theory was posited by Simon and Gagnon publishing their initial work in 1973 (Simon & Gagnon, 2003). The primary idea behind sexual script theory is that sex is a socially constructed behavior. While biological components exist, the interactions between parties is social in nature. This social interaction includes consent communication. Simon and Gagnon broke their theory into three types of sexual scripts: cultural scenarios, interpersonal scripts, and intrapsychic scripts. Individuals learn about what sex is through these scripts. Cultural scenarios involve information individuals receive from the people and environments around them. These scenarios may come from parents, friends, teachers, media, or pornography, to name a few. Interpersonal scripts involve what a person learns about sex from their personal experiences with a partner or partners. Intrapsychic scripts are scripts of fantasy and are often not played out in reality.

For the purposes of this study and application to higher education, most attention was paid to cultural scenarios and interpersonal scripts. A positive aspect about understanding sexual interactions as being a socialized engagement is that sexual scripts can change. If sexual scripts can change, than previously problematic understandings of sexual interactions can be shifted to healthier frameworks. That being said, staff at institutions of higher education who wish to influence scripts can look to cultural scenarios to assist in creating an understanding of what sex is amongst students. Generating and disseminating healthy cultural scenarios about sex may assist in countering negative scenarios that students have been exposed to or those situations where a student has encountered no cultural scenarios.

For those individuals who have been exposed to limited cultural scenarios or have relied predominantly on problematic scenarios that may be found in pornography or other media, perceptions of sex may be incongruent with institutional expectations. Specifically for individuals who have encountered no cultural scenarios, their perception of what sex is will be limited to their interpersonal scripts. It then becomes a matter of luck regarding the type of interpersonal interactions someone has in the first sexual encounters that will then fully inform their understanding of sex.

For adjudicating bodies it may be important to understand where someone's understanding of sex comes from and to know the type of education that is occurring at this institution on these topics. Further, self-reflection necessitates an awareness that sexual scripts change over time. This means that a person in their 30's, 40's, or older who is making determinations regarding what a reasonable 19-year old would consider to be affirmative consent may struggle as those individuals likely have different exposure to cultural scenarios and most definitely should have different exposure to interpersonal scripts.

In considering training and decision making on sexual misconduct cases, one may choose to consider how decision makers are being exposed to current relevant cultural scenarios.

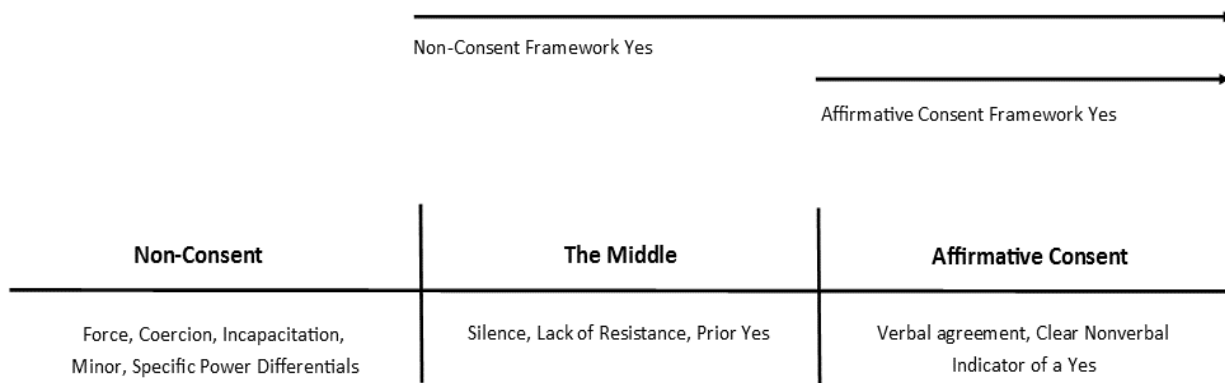
In what ways do you ensure your investigators and decision makers are being exposed to current cultural scenarios related to sexual contact?

Advanced Sexual Misconduct

Notes:

Affirmative Consent, Lack of Resistance, and Nonverbal Indicators

To ensure an understanding of the context for an affirmative consent framework, below is a figure demonstrating the difference between an affirmative consent framework and a non-consent framework. Most institutions function from an affirmative consent framework while most laws function from a non-consent framework (higher education is looking for a clear “yes,” the law is looking for a clear “no”). This different between consent frameworks often creates challenges in that many who are entrenched in a non-consent framework struggle to resolve pre-conceived ideas of what consent is.





Advanced Sexual Misconduct

One may have noticed that in the study abstract that lack of resistance is referenced as an indicator of non-verbal consent, but is placed in the middle and not in the affirmative consent area of the figure above. Part of the conversation with study participants involved better understanding lack of resistance. Participants were asked follow-up questions regarding what happens when someone freezes versus allowing someone to do something (lack of resistance). Participants were not able to identify how one would know the difference and indicated partners would have to be paying very close attention to each other in order to differentiate.

An important concept to consider with the difference between lack of resistance and freezing is the assumption of where power lies in a situation. If someone “allows something to happen,” it can be assumed that that person has power and autonomy to stop the situation and that they believe they have power and autonomy to stop the situation. When someone freezes, it can be assumed that that person does not have power and autonomy to stop the situation or believes they do not. It is also possible in a freezing situation that someone is shocked and does not know how to respond. Given determining the difference between lack of resistance and freezing is difficult without a direct and non-coerced conversation, lack of resistance is not a reliable way to determine that someone is consenting to sexual contact. There should instead be clear positive actions that indicate this consent.

The table below provides a list of nonverbal behaviors that participants identified as indicating consent. The column referencing level of invasiveness relates to how much contact or impact one may have on a partner in utilizing that indicator of consent. The strength has to do with how likely that behavior is indicating consent on its own. For instance genitally stimulating a partner is a strong indicator of consent, but also requires touching one’s partner to communicate that consent, thus it is significantly invasive. Alternatively, eye contact is minimally invasive, but is not a very strong indicator as there are many situations in which individuals may engage in eye contact that have nothing to do with sex. That being said, eye contact in combination with genital stimulation may be a stronger indicator in combination than either of those behaviors alone. Further, eye contact and nodding from the person being stimulated may assist someone in knowing that they are being received well. Someone utilizing this chart to make decisions about their behaviors should likely steer away from invasive indicators of consent without verbal or other affirmations as they could assault another person in attempting to communicate consent. Decision makers looking at an incident on the back end, however, may look to all of the ways consent was or was not communicated.



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Nonverbal Behaviors Indicating Yes or Maybe, Level of Invasiveness, and Strength as Indicator

Nonverbal behavior	Level of invasiveness	Strength as indicator
Nonverbal Yes (positive references only)		
Sex noises and/or heavy breathing	Minimal	Moderate
Nodding	Minimal	High
Display or use of contraception	Minimal	High
Arousal	Moderate to significant	Low
Exposing one's genitals	Moderate to significant	High
Positioning	Moderate to significant	High
Touching the body	Significant	Moderate
Guiding into position	Significant	High
Assertiveness and initiation	Significant	High
Drawing in/embracing	Significant	Moderate
Continuing action by the Recipient	Significant	High
Removing another individual's clothing	Significant	High
Nonverbal Yes in response to physical contact (positive references only)		
Reciprocation	Minimal	High
Escalation	Moderate	High
Continuing action by the initiator	Minimal	High
Nonverbal Maybe (mixed positive and negative references)		
Eye contact	Minimal	Low
Invitation into bedroom/private space	Minimal to moderate	Moderate
Removal of one's own clothing	Moderate to significant	Moderate
Kissing	Significant	Low
Genital stimulation	Significant	High
Silence	Minimal	Low
Lack of resistance	Minimal	Low

Harrell, K. A. (2017) Nonverbal indicators of sexual consent in college students. (Doctoral dissertation).

It is important also to recognize that there is a difference between internal and external consent. When it comes to determining whether a sexual interaction between parties was consensual, decision makers can only rely on the behaviors that were externally indicated. It is unreasonable to assume that a party initiating sexual contact is able to read the mind of the person they are engaging with, but they do have to pay attention to ensure they have consent.



Complex Sexual Scenario

The following sexual scenario was crafted based on scenarios written by participants in the study. This scenario and discussion questions are included for dialogue with independent learning groups.

PJ and Shawn have known each other for years. PJ invited Shawn to a party and Shawn accepted. They stayed at the party for a short time. Shawn asked PJ if they could leave and go back to PJ's place; PJ agreed. When they arrive, PJ immediately guides Shawn to the couch where they both kick off their shoes and sit closely. PJ cuddles up to Shawn taking a deep breath as PJ's head drops to Shawn's shoulder. Shawn places an arm around PJ. Shawn rubs PJ's shoulder with a thumb while PJ places a hand on Shawn's knee. PJ looks up at Shawn, making eye contact and propping up to get closer. Shawn leans down to kiss PJ pushing PJ down onto the couch. PJ kisses back and wraps an arm around Shawn to draw them closer together. Both PJ and Shawn use their hands to explore each other's body, avoiding contact with the other's genitals. After some time passes, Shawn stands reaching a hand out to PJ. PJ takes the hand, standing and leaning in to kiss Shawn again. They both push into their embrace exploring each other's mouths with their tongues. Shawn heads to PJ's bedroom as PJ follows. Shawn removes Shawn's shirt as PJ approaches placing both hands on Shawn's stomach and slipping a finger into Shawn's pants while running the finger along the waistband. PJ slides a hand into the back of Shawn's pants cupping Shawn's butt while kissing Shawn's neck. Shawn unbuttons PJ's shirt opening it and pulling PJ in making skin to skin contact. PJ pulls back, looking into Shawn's eyes and slipping the unbuttoned shirt off. PJ then slowly unfastens PJ's shorts stepping out of them and dropping them to the floor. Maintaining eye contact, Shawn removes Shawn's pants and underwear. Shawn guides PJ's hand to Shawn's genitals, PJ stimulates Shawn and then drops slowly to the floor to stimulate Shawn with PJ's mouth. After a few moments, Shawn lifts PJ's head, guiding PJ back to a standing position and pulls PJ to the bed. PJ lays down. Shawn begins kissing PJ's body and pulling PJ's underwear down. PJ lifts PJ's hips from the bed allowing Shawn to draw PJ's underwear down. Shawn lays on top of PJ as they continue kissing each other. PJ again stimulates Shawn's genitals briefly with a hand. Shawn moves down PJ's body lightly licking PJ's genitals and additionally stimulating PJ with Shawn's fingers and hand. Shawn looks up at PJ and guides PJ to another position. Shawn moves to penetrate PJ and PJ does not move and makes no sound. Shawn stops. Moving to see PJ's face, Shawn raises both eyebrows searching PJ's eyes. PJ takes a deep breath and nods. Shawn tilts Shawn's head to the side, looking again into PJ's eyes. PJ nods again and guides Shawn back into position to penetrate. Shawn reaches to take one of PJ's hands. PJ grips Shawn's fingers as Shawn gently penetrates PJ.

Harrell, K. A. (2017) Nonverbal indicators of sexual consent in college students. (Doctoral dissertation).



Advanced Sexual Misconduct

Identities and Intersectionality

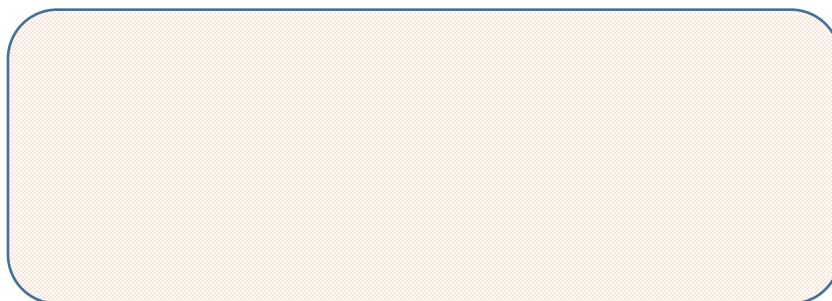
1:10 – 2:50pm (with 10-minute break, followed by 10-minute mindfulness)

Learning Outcomes

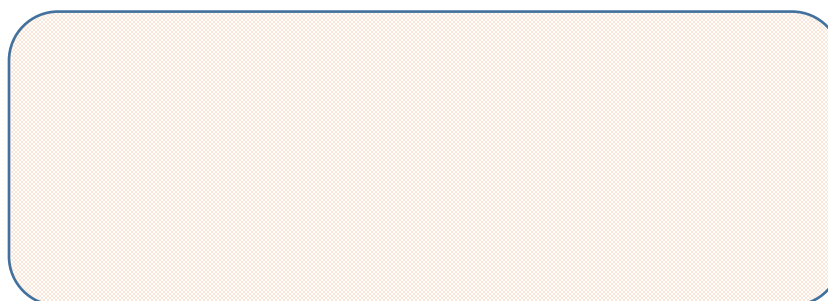
1. Participants will be able to identify varying identities and how those identities may interact with sexual misconduct resolution processes
2. Participants will be able to apply their understanding of identities to advocate for inclusive policies and practice
3. Participants will be able to critically analyze their training and response

Box Exercise

Victim Box



Offender Box





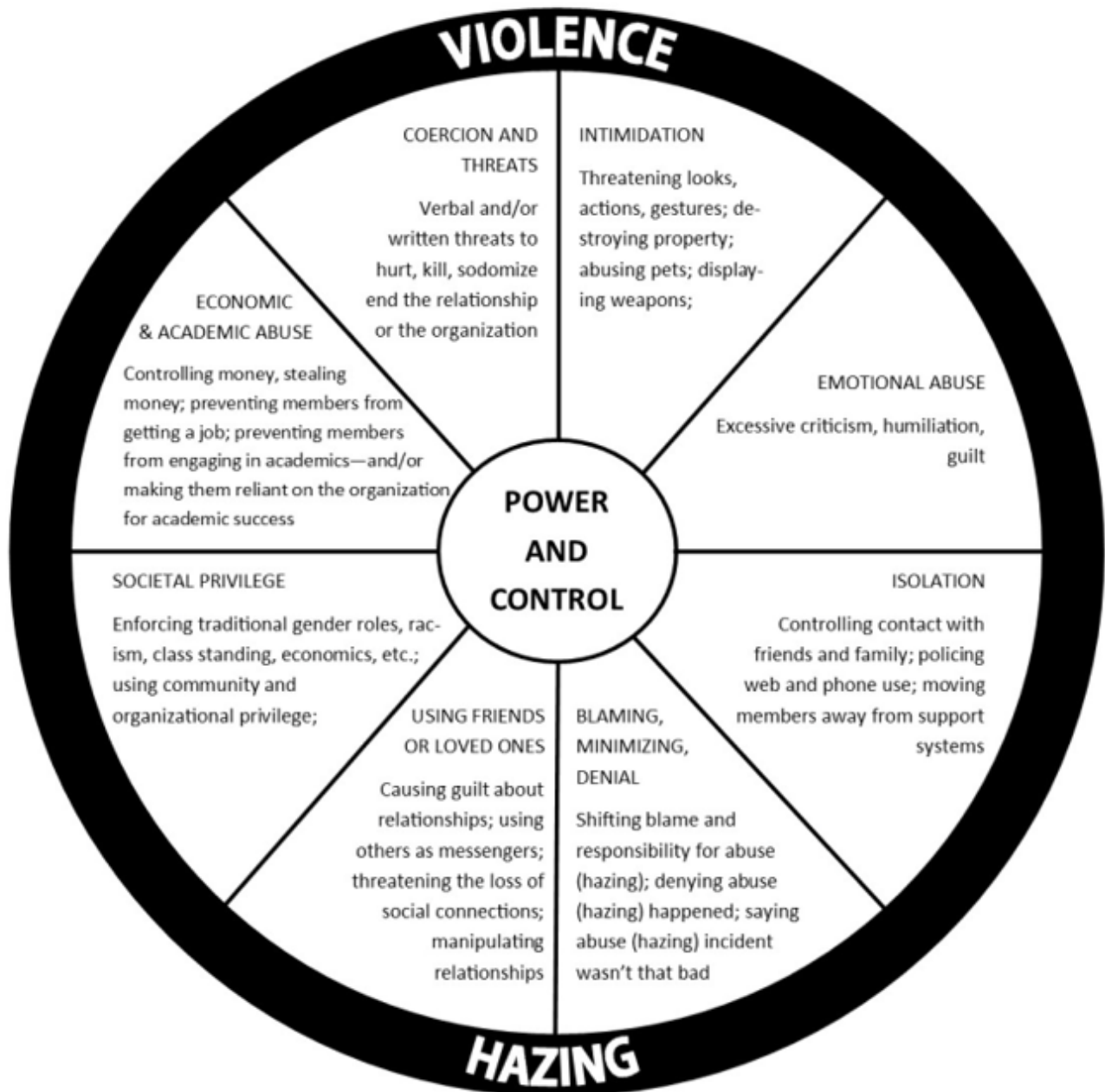
Advanced Sexual Misconduct

Checking Assumptions

Notes:

Identities and the Parties





There are many versions of the Power and Control Wheel. This wheel was adapted from the wheel found on the University of Wyoming Stop Violence Program website. The site informs the reader that the diagram was developed by a domestic violence program in Duluth, MN



Advanced Sexual Misconduct

Identity Considerations

Race	Region	Veteran Status
Ethnicity	Rural/Urban/Suburban	Active Military Status
Religion	Education	Marital Status
Body Size and/or Shape	Socio Economic Status	Popularity
Ability	Immigrant Status – documented/undocumented	Athlete
Mental Health	First Gen College Student	Organizational Affiliation
Sex	First Gen American	Political Affiliation
Gender	Prior Trauma History	Introverted/Extroverted
Gender Expression	Advocate/Support Role	Dress/Style/Attire
Sexual Orientation	Age	Beliefs/Values
Parental Status	Undergraduate/Graduate/Professional	Career/Major
Prior Sexual Experience	Personal Hygiene	Flat Earther

What other identities may be salient for individuals?

Notes:

Pick two of the brainstormed or provided identities

From the questions below, answer three

- How might this identity impact an individual’s ability to recognize that a behavior fits within the scope of sexual misconduct?
- How might this identity impact an individual’s willingness to report?
- How does this identity impact how someone may be treated in the process from reporting to resolution?
- How might this identity impact an individual’s willingness to participate in a university process?
- How might this identity impact how an individual may present during the process?
- How might this identity impact whether we believe an individual?
- How might this identity impact the likelihood that an individual will litigate or file a complaint with OCR and how does this impact how we address the case?
- How might this identity impact the likelihood that an individual will be found responsible?
- How might this identity impact the level of severity of the outcome?
- How might this identity impact an individual’s likelihood to appeal?



Advanced Sexual Misconduct

Potential Harm Caused

Identities and Intersectionality: What to Do About It

Approaching Barriers

Policy, Files, and Databases - Language



Advanced Sexual Misconduct

Identities Case Study

You supervise the Title IX resolution process relating to students at McHeadell College (MC). MC has struggled with employees and student leaders attempting to resolved sexual misconduct cases on their own. As a result of these challenges, MC has created a strict reporting requirement for all employees and chief student leaders. (MC outsources all counseling services). Furthermore, once reported, all cases are investigated.

In order to resolve a sexual misconduct allegation, MC utilizes a hearing resolution process. When there are issues of sexual misconduct, allegations are first investigated by an investigation team. The role of the investigation team is to collect relevant information about a case; they do not make any determinations regarding responsibility or sanctions. Once the investigation team finishes their investigation, the investigation is submitted to the Conduct Office where a Conduct Professional reviews the case and determines whether there should be charges. If there is sufficient information to proceed with charges, the Conduct Professional issues a charge letter to the respondent and a notice to the complainant.

Recently you've received a complaint regarding a pending case.

Background

Kenneth is a black, cisgender, male, student athlete on the track team. Kenneth started running at a young age. In high school, Kenneth won state in the 100m and 200m. Kenneth was highly sought after by MC which has a strong track program. There are multiple former MC track athletes that have competed in the Olympics. It is Kenneth's dream to run in the Olympics.

Recently Kenneth has been having issues with his knees. The team orthopedist has directed Kenneth to engage in cross training in the pool. The Olympic-size pool used by the swim team is open to all student athletes as long as the team is not in organized practice. Kenneth starts his pool workouts mid-semester. He is joined by a few swim team members who are getting extra swim time in.

One of the swimmers is named Trevor. Trevor is a white, cisgender male. On Kenneth's third day in the pool, Trevor took the lane next to him and began pacing him. During a break between sprints Kenneth overheard Trevor saying, "This is pathetic. May be fast on land, but is a tortoise in the water." Kenneth is visibly annoyed; this contributes to the growing frustration with his injury and not being able to perform up to his standard.

The next day Trevor gets into the same lane that Kenneth is swimming in. At one point when Kenneth was on the way, Trevor pinches Kenneth's butt. Kenneth tells Trevor to fuck off. Trevor laughs and says, "Then swim faster." Kenneth kicks off of the wall and Trevor goes to another lane with his teammates.

Kenneth changes the time that he works out in the pool and begs the team doctor to let him do something else for his cross training. Kenneth does not tell the doctor about Trevor.

A week later Trevor shows up to the pool at the time Kenneth is swimming. Trevor stays in a lane a few lanes away from Kenneth. Kenneth finishes his workout and heads to the locker room. While in the shower, which is an open shower room, Trevor walks in. Trevor is naked with his towel over his shoulder. The only two people in the shower are Kenneth and Trevor. Trevor takes the shower next to Kenneth who is facing the wall. Trevor starts his shower, looks over at Kenneth and says, "Huh, I guess the rumor about black men isn't true" while



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glancing down at Kenneth's penis. Kenneth quickly rinses off and heads to a changing room with his towel around his waist.

The changing rooms in the locker room are single stalls with a curtain. Kenneth enters a stall and closes the curtain. Kenneth keeps his back to the curtain. Kenneth removes his towel and Trevor enters the stall behind Kenneth. At this time Trevor is wearing shorts and no shirt. Trevor reaches around Kenneth, puts his hand on Kenneth's penis and says, "maybe your hard cock is bigger." Kenneth's penis begins to become erect. Kenneth freezes. Trevor whispers into Kenneth's ear, "that's right, just let it happen." Trevor squeezes Kenneth's penis hard and walks out. Kenneth sits in the stall huddled over shaking.

Antonio, another member of the swim team sees Trevor leaving the stall and sees there is still someone in the stall. Antonio is suspicious because Trevor is generally a jerk. Antonio has also heard rumors that Trevor has crept some people out with his behavior and may overstep physical boundaries. Antonio walks next to the stall and asks, "hey man, are you okay?" Antonio hears the person hit the stall wall and Kenneth responds, "I'm fine, just go."

Antonio is worried, so he goes and finds his team captain. Antonio finds his team captain who goes with him back to the locker room. When they get to the locker room, Kenneth is no longer there. The team captain isn't sure what to do as he does not know what happened, but given what Antonio has told him about Trevor's behavior in general, the team captain believes he needs to report this per MC policy.

The situation is investigated. They are able to figure out who was in the stall as someone identified Kenneth as being at the pool that day. Kenneth participates, reluctantly, in the investigation process. While Kenneth described the behaviors that occurred, Kenneth insisted that he was not impacted by what happened and that he did not want anything to move forward. During this time, however, Kenneth stops working out at the pool. Due to Kenneth's injury, he is limited in what else he can do. Kenneth starts losing weight and stops spending time with his teammates. Kenneth becomes very quiet and withdrawn. Kenneth has also skipped multiple classes since the incident.

After the investigation was completed, the conduct officer reviews the case. Based on the information provided, the Conduct Professional assigned to the case determines there is sufficient information for charges. The Conduct Professional sends notice to Kenneth about the process. The form letter for complainants begins: "You have been identified as a victim in a case regarding sexual misconduct." The letter summons Kenneth for an information session where he receives information about the process and opportunities for participation. Kenneth comes to the information session alone and is largely quiet during the session. The Conduct Professional, worried about Kenneth, also provides Kenneth with some options about counseling services available for students. At the end, Kenneth says, "I don't want anything to do with this, and I don't need counseling."

Kenneth does not participate in the conduct process. Despite this, there is enough credible information to find Trevor responsible for a violation of the student rules using a preponderance of the information. Trevor is permanently removed from the swim team, is suspended for two years, and has educational requirements upon return to the university.



Advanced Sexual Misconduct

Social Media, Public Opinion, Policy, & Practice

Learning Outcomes

1. Participants will better understand how to address issues with social media.
2. Participants will better understand the impact of social media on campus responses.

All institutions have:

- Student Codes of Conduct
- Sexual Misconduct Policy
- Titles VI and VII policies

Within the aforementioned policies are how each institution responds to allegations and how they process complaints. However, does public opinion impact your institution's response to an allegation?

Consider:

- Stakeholders
- Alumni
- Boosters

Influence of:

- President of the University
- Vice President of an area
- General Counsel
- Board of Regent/Trustee

UK Cheerleaders blast university's decision, defend coaches and program's reputation

By Mrs. Tyler Thompson | May 20, 2020 | 11:00pm | 47



change.org

Start a petition My petitions Browse Membership

Log in

After a video surfaced of George Floyd being murdered by Minneapolis police, 15-year-old Kellen started a petition demanding justice. It's now the biggest petition ever on Change.org and officers have been arrested and charged. But we haven't yet seen justice. [You can sign the petition here to send a message that Black lives matter.](#)

Get Jomo, Ben, Kelsey and Spencer Coaching at Kentucky again!! Get Thomas in advisor seat!



17,552 have signed. Let's get to 25,000!



- Lisa Mullis signed this petition
- Haylee Vaughan signed this petition

First name

Last name

Email

Lexington, 40502
United States



Advanced Sexual Misconduct

Media Responses

What is your institution’s public media response?

- If a reporter calls your office for a statement, how do you respond?
 - Are you allowed to comment on investigations – open or closed?
- Do you know the name/number of your PR person?
 - Does your office have a relationship with this person?
- The media can (and usually does) report one side of the story.
 - This may be because it’s what has been leaked
 - This may be because that is what students are reporting

<https://www.wkyt.com/content/news/No-heat-in-some-dorms-buildings-on-KSU-campus-500725691.html>

- If a student misreports the story and it is on the local or national news, how do you respond as an institution?
 - Or do you respond as an institution?
- While you may not be able to respond to the media, you can make sure upper-level administration and PR know your side and what is happening.
- Keep Gen. Counsel, PR, VP informed.
 - Have regularly scheduled meetings.
 - Known when to push back and when to let it go.



Advanced Sexual Misconduct

Timely Warnings

- The Clery Act requires institutions to issue a timely warning when a Clery crime, occurring within Clery geography, poses a serious or on-going threat to the campus community.

- Who writes the timely warnings for your campus?
 - Do you help vet the content?
 - Do you name the Respondent?

- How often are they sent out?
 - How do you define “a serious or on-going threat to the campus community”?

- Make sure you understand the requirements



ISSUING PROCEDURES

Objective: Determine if procedures in place for issuing timely warnings are streamlined and align with policy.

Steps to Take:

1. Self-assess current process for issuing timely warnings through asking the following questions:
 - a. Who is involved in determining whether a timely warning is issued?
 - b. Who has the authority to determine if a timely warning should be issued?
 - c. Who has the authority to issue a timely warning?
 - d. Are there multiple levels of approval that must take place for either step: determining to issue and sending the warning itself?
 - e. If multiple levels of approval exist, do they create any barriers to sending information in a timely manner?
 - f. How are we operationalizing the phrase "serious or ongoing threat"?
 - g. What questions are we asking in analyzing a reported crime to determine if it meets the criteria for issuing a warning?
2. Determine if dissemination methods used reach all members of the campus community.
3. Evaluate if anyone else should be involved in determining whether to issue timely warnings.
4. Note any areas of concern or gaps in procedures that need to be filled.
5. Propose any needed changes to those individuals involved in determining whether or not a timely warning should be issued and disseminating the warning itself.
6. Work collaboratively on incorporating any changes or editing suggestions to best fit the campus culture and organizational structure.

Points to Consider

1. The Department of Education has consistently expressed concerns – and even findings of noncompliance – regarding delay of notification because of an arduous consultative process.
2. As timely warnings contain more information than other types of alerts, email is a commonly used dissemination method; however, many institutions fear that students do not read emails. Ensure multi-modal dissemination methods are accurately conveying all needed information to the campus community. If using texts as a prompt to check email or updates on a website, confirm that such emails are opened or websites are accessed.
3. Streamlining the process by which a timely warning is approved for issuance ensures information gets sent more quickly and efficiently to those that need it most: the campus community.
4. Document any and all decision-making regarding why a timely warning was or was not issued and apply such decision-making consistently. The Department of Education has found institutions out of compliance if they could not offer documentation to show that a timely warning analysis took place.
5. Create a timely warning decision matrix that reflects the factors you determined would constitute a "serious or on-going threat" at your institution.



Advanced Sexual Misconduct

Mindfulness Exercise

Complete the “Assess your self-care practice” evaluation and processing questions in the Trauma-Sensitive Schools Training Package (p. 12-14)

Independent Learning Group

- What are some of your reflections from yesterday?
- Are there things that the independent learning group can assist with in processing the information or next steps for your campus?
- Relating to social media, public opinion, policy, and practice:
 - What were your main take aways from the workbook content?
 - What do you still have questions/concerns about that others in the group might have ideas about?
 - What are some things you and/or your institution have struggled with?
 - What lessons have you learned from those experiences?

Advanced Sexual Misconduct

Slide 10

Dating Violence in an Electronic Age

Revenge Porn

- Sharing of private, sexual materials, either photos or videos, of another person without their consent.
 - Sent to friends
 - Uploaded to websites
- Michael Pratt – Founder of the pornographic website, GirlsDoPorn.
- Revenge porn is cyber sexual harassment (or sexual exploitation).
- Most states have revenge porn laws.

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Slide 11

Dating Violence in an Electronic Age

Checking In

- Checking in or Checking up?
 - Where are you?
 - Who are you with?
 - Why haven't you texted back?
- Relationships are built on trust.
- Checking your phone, iPad, email, social media.
- Reading your text messages

When you ask how her day went but you already know how her day went



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Slide 12

8:51 PM 98%

Back (12) Adam Details

be mother daughter/ father son. Not that I want to withhold the info from you. There shouldn't be wife/secret affair partner privilege. Plus you never told me what your mom said about the bruise on your arm. That was before your question.

She joked that you hit me.

She obv doesnt know. Maybe she should

No she shouldn't.

Now that you told me that. Call me maybe.

Text Message Send

Slide 13

8:48 PM 99%

Back (12) Adam Details

Where did you sleep last night? Because it wasn't here. I set traps to see if you were gonna sleep here. You didn't. Don't lie to me.

This was a test and you did exactly what I thought your were gonna do.

Now I know. I would like to hear it from you.

BTW you have no right to be mad at me if you went out in secret and lied about it.

I love you no matter what you did last night

Text Message Send

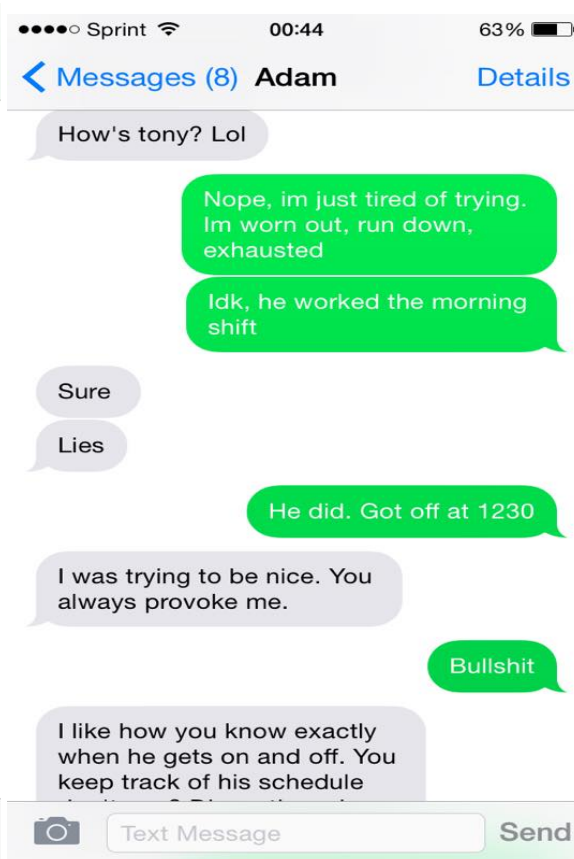
Hatch, 2017

Advanced Sexual Misconduct

Slide 14



Slide 15



Slide 16



Advanced Sexual Misconduct

Slide 17

Beyond Physical Abuse

Emotional Abuse

- Undermining another person's feelings of self-worth and independence.
- What it is:
 - Constant criticism
 - Putting someone down in front of others and privately
 - Gaslighting
 - Name calling
 - Double standards
 - Blaming others for your unhappiness

(Center for Disease Control)



Slide 18

Beyond Physical Abuse

Emotional Abuse

- What it isn't:
 - Breaking up with a partner**
 - Arguing with your partner**
 - Getting your feelings hurt
 - Being honest - even blunt
 - Yelling**
- ** Let's talk...

(Center for Disease Control)



Slide 19

Beyond Physical Abuse

Sexual Abuse

- If you love me (manipulation/emotional abuse) then...
 - Sex in public
 - Activities you are not comfortable with
- Those who experience physical and sexual abuse are more likely to be injured or killed compared to those who experience one form of abuse.
- Mental health issues.

(National Coalition Against Dating Violence)



Slide 20

Beyond Physical Abuse

Financial Abuse

- Controlling a Complainant's ability to acquire, use, and maintain financial resources.
 - Survey by the Centers for Financial Security found that 99% of domestic violence cases also involved financial abuse.
- Examples:
 - Prevented from working
 - Lack of access to money
 - Having to account for every penny

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Slide 21

Beyond Physical Abuse

- Impact of financial abuse:
 - Powerful method of keeping someone trapped in an abusive relationship.
 - No access to money or resources (credit cards) – difficult to safety plan.
 - Undermines their self worth and feelings of adequacy.
 - Ruined (or no) credit.



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Slide 22

Beyond Physical Abuse

Isolation

- Provides the abuser with greater control in the relationship.
- How is it done?
 - Starts subtle
 - Starts by “checking in”
 - Gets the person to quit activities
 - Cuts them off from friends and family

(The National Voice of Domestic Violence)

Slide 23

Impact of Dating/Domestic Violence

- Loss of confidence
- Inability to process/express emotions
- Physical injury
- Mental health issues
- Suicide
- Self harming behaviors
- Dropping out of school
- Doing poorly academically

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Slide 24

Clery

- Make sure you are reporting these matters to your Clery Coordinator.
- How do you report them?
- Do you have/attend Clery meetings?

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Slide 25

Narcissists

- Narcissism, as defined by the Mayo Clinic, is a mental condition in which people have an inflated sense of their own importance, a deep need for excessive attention and admiration, troubled relationships, and a lack of empathy for others.
- Theodore Millon's 4 Types of narcissists:
 1. Unprincipled narcissist: Fraudulent, amoral, disloyal – a charlatan.
 2. Amorous narcissist: Clever, charming, pathological liar – Casanova.
 3. Compensatory narcissist: Passive aggressive, illusions of being superior.
 4. Elitist narcissist: Feels privileged and empowered by virtue of special childhood status.

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Slide 26

Veil of Perfection

- The veil of perfection:
 - Perfect life
 - Perfect/specific image
- When the image of the perfect life is more important than the life you are living.



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Slide 27

Grooming Allies

- Narcissists allies
 - Fan club
 - Abuse through proxy
 - Witnesses for hearings



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Slide 28

Sanctioning a Narcissist

- You control the meeting.
- Keep the focus on their behavior.
- Remember, sanction the behavior, not the person.

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Slide 29

Sanctioning a Narcissist

- Sanctioning Dating and Domestic Violence
 - Are you sanctioning for liability purposes?
 - Are you sanctioning in an educational purpose?
- How do you sanction an abusive person to not be an abuser?
 - Can you sanction a person that way?

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Case Study Overview:

Michaela Daugherty and Patrick Davis are sophomores at Central University. They are high school sweethearts and have dated since high school. During their freshman year, so they could spend more time together and “avoid” visitation restrictions, Patrick moved into Michaela’s residence hall. Michaela and Patrick have the same major, Elementary Education, and they both want to be teachers in their hometown.

Because they have the same major, they have the same classes, including their electives. Patrick and Michaela talked about this and Patrick was excited to take the same classes as Michaela. This way they can spend more time together, help each other study, and share notes.

Everyone knows that Michaela is disorganized and Patrick is the organized one. Because they live in the same hall, have the same class schedule, and spend the majority of their time together Michaela gave Patrick her ID to keep up with. She was afraid she would lose it and have to pay the \$50 replacement fee.

Because Patrick has Michaela’s ID he always knows where she is going. She has to have her ID to go to another residence hall. She has to have her ID to use her meal plan. She has to have her ID to go to the campus gym to work out.

Is this Dating Violence as defined by Title IX?

Do you have any concerns?



Advanced Sexual Misconduct

What steps would you take first?

How would you discuss this with Michaela?

How would you discuss this with Patrick?

Burnout, Mindfulness, and Self Care

3:10 – 3:40pm

Learning Outcomes

1. Participants will be aware of secondary trauma stress conditions.
2. Participants will be able to assess the presence of secondary trauma stress symptoms.
3. Participants will be aware of self-care techniques.

Slide 6

Secondary Trauma Stress (STS)

The emotional distress that results when an individual hears about the traumatic experiences of another individual.

- Burnout
- Compassion fatigue
- Vicarious trauma



Advanced Sexual Misconduct

Slide 7

STS Symptoms

- Increased anxiety and concern about safety.
- Intrusive, negative thoughts and images related to student's traumatic stories.
- Fatigue and physical complaints.
- Feeling numb or detached from students.



Slide 8

STS Symptoms

- Feeling powerless or hopeless about students and the work.
- Diminished concentration and difficulty with decision making.
- Desire to physically or emotionally withdraw from people or situations that trigger difficult thoughts and emotions.



Slide 9

Warning Signs of STS and Burnout	
Hypervigilance	Excessive alertness for potential threats or dangers at and outside of work. Always being "on" or "on the lookout".
Poor Boundaries	Lacking a balanced sense of your role so that you take on too much, step in and try to control events, have difficulty leaving work at work, or take the work too personally.
Avoidance	Coping with stress by shutting down and disconnecting.
Inability to Empathize/Numbing	Unable to remain emotionally connected to the work.
Addictions	Attaching to distractions to check out from work, personal life, or both.
Chronic Exhaustion/Physical Ailments	Experiencing physical, emotional, and spiritual fatigue or inescapable aches and pains exceeding what you expect from an ordinary busy day at work.
Minimizing	Trivializing a current experience by comparing it with another situation that we regard as more severe.
Anger and Cynicism	Using cynicism or anger to cope with other intense feelings that we may not understand or know how to manage.
Feelings of Professional Inadequacy	Becoming increasingly unsure of yourself professionally, second-guessing yourself, feeling insecure about tasks that you once felt confident to perform.

Slide 11



Mindfulness is the basic human ability to be fully present, aware of where we are and what we're doing, and not overly reactive or overwhelmed by what's going on around us.





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Appendix

A: Consent Case Studies

A

Maria and Charles are in a class together and both live in the same off-campus apartment. Both are first-year students at Lost University (LU). Over the course of the academic year, Maria and Charles have gotten to know each other. Maria has been struggling extensively with anxiety and depression and had opened up to Charles about these struggles. It is late in the academic year and Maria comes forward with a complaint about Charles. Maria was encouraged to report by her friend Shawna.

Incident 1:

It was two months into Maria and Charles' interactions with one another. Charles asked Maria if she wanted to hang out; Charles mentioned there was a movie he wanted to watch on Netflix. Maria agreed and came over to his apartment. Charles noticed that Maria seemed down when she got to his apartment and asked if she was doing alright. Maria indicated that she was struggling and was unsure if she wanted to stay enrolled at LU. They talked for a few minutes and then Maria suggested that they watch the movie. Charles indicated he was always there for Maria and gave her a hug. Maria felt comforted by the hug. They both sat on the couch in Charles' apartment and started the movie. Charles reached out for Maria's hand. Maria leaned into Charles. Charles began kissing Maria's face. At that point, Maria began to feel uncomfortable. Charles moved Maria's face with his finger under her chin and leaned in to kiss Maria. Maria kissed him back and then withdrew, saying that she wanted to watch the movie.

Incident 2:

Maria started experiencing a panic attack. She was sobbing and having trouble breathing. She got her phone and texted Charles.

TEXT MESSAGES

Maria: Hey

Charles: Hey

Charles: What's up?

Maria: I don't know what to do. I hate life. I can't take this anymore. You're the only one I can talk to.

Charles: What do you mean?

Maria: It's just too much.

Charles: Do you want me to come over?

Charles: Where are you?

Maria: At home



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Charles headed over to Maria's apartment and found her sitting in a ball in the corner of her bedroom. Charles sat down next to her, kissed her on the forehead and wiped the tears from her face, and asks "What's going on?" Maria begins to calm down and began breathing more steadily. Charles turned to face Maria, and kept his hand on her upper arm. Charles and Maria talked for approximately 30 minutes. Maria thanked Charles for coming over. Charles moves his hand to Maria's face and looks into her eyes. Maria looked back, then looked down. Charles leaned in and kissed Maria. Maria was uncomfortable and was unsure how to react, but kissed Charles back. Charles withdrew from the kiss and Maria looked down. Charles started brushing Maria's hair back with his hand and wrapped his legs around Maria. He reached around Maria and drew his hands down her back. Maria tells Charles that she doesn't want to do "this" right now. Charles said okay and helped Maria up to her feet. Charles asked Maria if she's going to be okay. She says, "Yes" and then Charles headed home.

Incident 3:

Maria texts Charles.

TEXT MESSAGES

Maria: You busy?

Charles: Naw, what's up?

Maria: Can you come over? I need you.

Charles: Absolutely. On my way.

Charles arrived at the apartment and Maria let him in. They sat on the couch and talked for a while. Charles asked Maria if she wants to have sex. Maria was a virgin and Charles knew this. Maria says, "Okay." Maria walked into her bedroom and Charles followed her. Charles penetrated Maria with his penis. After a couple of minutes, Maria tells Charles she isn't comfortable with what's happening. Charles said, "Okay" and stops. Maria indicates she was worried about saying "No" to Charles because she has seen him be aggressive before.

After this last incident, Maria tells her friend Shawna that Charles pressured her into having sex when she really didn't want to. Shawna told Maria that she needs to report Charles.

Questions:

- Based on what you see here, were these interactions consensual?
- What are examples of consent and/or non-consent in the case?
 - Which of these were internal vs external?
- Might this be a violation of your institution's sexual misconduct policy?
 - Why/Why not?
- What other information might you want to know to determine whether this is a violation of your institution's sexual misconduct policy?
- If this is all you have to go on, how would you handle this report?
- What would you include in your rationale for your decision?



B

Hayden and Finley started dating eight years ago. After being in a relationship for one year, they had still not engaged in any form of penetrative sex, though they did engage in other sexual activity. Part of the reason they don't have penetrative sex is because Finley values intimate interactions and had made a decision at a young age that penetrative sex should be reserved for marriage. Both Hayden and Finley believed that sex is an integral part of marriage and that it is expected that— married partners are expected to engage in sexual activity as a regular part of that marriage. Finley and Hayden talk about their life together and decide to get married. Physical intimacy in the marriage in the first two years was positive for both Finley and Hayden; each felt desired by the other and communication was clear as the two experimented in their love making. Over time, Finley and Hayden fell into a routine in their lives together, including their sexual engagement.

It is the spring semester and both Finley and Hayden are enrolled at your institution as graduate students in different departments. A faculty member in Finley's department notices that Finley has been staying late in the office, despite being on top of school work and graduate assistantship responsibilities. The faculty member decides to check in with Finley. Finley discloses issues with Hayden. Finley indicates that Hayden forced Finley to have sex three weeks ago and that Finley has been avoiding going home until Finley believes Hayden is asleep. This has resulted in increased tension between Hayden and Finley. Hayden has become more physical with hugs, kisses, and fondling at other times, while also expressing that Hayden misses Finley. Finley has become increasingly uneasy at home.

The faculty member expresses concerns and asks if Finley is fearful of Hayden. Finley indicates not being afraid of Hayden being violent, but feels betrayed and violated. The faculty member lets Finley know about resources on campus and temporary housing options if Finley wants to separate from Hayden. The faculty member also refers Finley to a campus case manager and counseling services. Finley goes to the case manager and shares what happened three weeks ago.

Finley's Reported Experience:

Finley and Hayden hosted a party at their house. Finley did not drink in order to manage the guests, keep the noise at an appropriate level, and take care of Hayden in case Hayden "overdid" things. As the night continued, a few of Finley and Hayden's friends drank too much to drive home. Finley invited them to stay at their house so that they could drive home safely the next day. Finley did not have to babysit Hayden much because Hayden only had a few drinks; enough to be a bit touchy and feely with Finley in front of their friends, which was usually not something Hayden was comfortable with. Hayden headed to bed and Finley got their friends settled in the guest bedroom and living room. By the time Finley headed to bed, Finley was exhausted and just wanted to fall to sleep wrapped in Hayden's arms. Finley climbed into bed where Hayden was already resting and snuggled up to Hayden. Hayden stroking Finley's arm. This was distracting to Finley and was preventing Finley from going to sleep, so Finley shrugged Hayden's arm away. Hayden moved to stimulate Finley's genitals, Finley indicated that they shouldn't be messing around with guests just on the other side of the wall and rolled over irritated because Finley just wanted to sleep. Hayden pulled Finley in by Finley's chest rubbing Hayden's genitals on Finley's butt. Finley tried pulling away, but Hayden would not release Finley. Hayden became more aggressive pulling at Finley's shorts. Hayden rolled Finley onto Finley's stomach. Finley stopped moving as Hayden began rubbing Finley's anus. Finley froze confused by what was happening and tried relaxing because Finley was concerned about the damage Hayden might do if Finley stayed tense. Hayden shoved fingers into Hayden's anus while



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straddling Finley's leg. While Hayden's fingers were inserted into Finley's anus Hayden was rubbing Hayden's genitals on Finley. Hayden cums, removes Hayden's fingers, kisses Finley on the back of the neck and lays next to Finley with an arm around Finley's waste. Finley pulls the shorts back up and curls into a fetal position facing away from Hayden. Hayden moves closer wrapping an arm around Finley and falls asleep. Finley lays silent and unmoving but awake for the remainder of the night.

The case manager listens and talks to Finley about potential options through the university. The case manager mentions possible informal resolutions options, and Finley believes this could be helpful. Finley indicates a wish for someone to talk to Hayden about what happened that night and believes Hayden will be willing to discuss it even though it will be awkward. Finley is simply not in a place to do this on Finley's own behalf at this time, but can't persist with the pattern of the last three weeks.

Hayden is called in by another case manager who explains that Finley has disclosed some concerns about a sexual interaction that occurred three weeks ago after a party at their house. The case manager explains that Finley is struggling and has asked for their assistance in working through this situation. The case manager also indicates that Finley has chosen to live in temporary housing for a few days while they work through what happened. Hayden is in disbelief that this meeting is happening and does not understand why Finley wouldn't speak directly with Hayden. The case manager asks Hayden if Hayden is willing to talk about what happened with their sexual interaction and whether Hayden believes Finley gave consent for the interaction.

Hayden's Reported Experience:

Hayden confirms everything Finley said about the party and the timeline leading up to the sexual activity. Hayden indicated knowing that Finley wanted to be intimate because Finley was snuggling with Hayden, and that this is how Finley has signaled an interest in sex in the past. Hayden indicated that Hayden knew they could be quiet so wasn't worried when Finley suggested it was a problem that there were others in the house. Hayden shared that Finley tends to be a bit uptight and that Hayden knew what needed to happen was for Finley to relax. When Finley rolled onto Finley's stomach, Hayden saw that Finley relaxed and was allowing Hayden to penetrate Finley's anus.

Questions:

- Based on what you see here, were these interactions consensual?
- What are examples of consent and/or non-consent in the case?
 - Which of these were internal vs external?
- Might this be a violation of your institution's sexual misconduct policy?
 - Why/Why not?
- What other information might you want to know to determine whether this is a violation of your institution's sexual misconduct policy?
- If this is all you have to go on, how would you handle this situation?
- What would you include in your rationale for your decision?

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B: Relevance Case Study

Facilitator Instructions

For this case study, each of you will receive general information about the case. This case study is for the purpose of practicing relevance determinations on questions during cross-examination. You are encouraged not to get caught up in the lack of information in the general information or party sections of this case study.

I need (3-5) volunteers

- Decision Maker (*only receives general information*)
- Complainant (*receives general information and complainant Joey information*)
- Respondent (*receives general information and respondent Alex information*)
- Complainant Advisor (*receives general information, complainant Joey information, and complainant advisor information*)
- Respondent Advisor (*receives general information, respondent Alex information, and respondent advisor information*)

The rest of you will receive general information for the case. Once all the volunteers have read the information, we will start. The decision maker will first ask the respondent's advisor if they have any questions for the complainant and will facilitate that process reminding parties to wait for the decision maker's determination of relevance for each question. The decision maker should make determinations regarding relevancy of each question verbally. If declining to allow a question, the decision maker should note the rationale for rejecting a question. This same process will be repeated with the complainant's advisor asking questions of the respondent.

Folks who are not in an official role. You have a table to fill in for each of the questions asked. Indicate if you would allow the question and a very brief rationale for your decision. You likely won't have time to write the entire question or rationale. Be thinking about how you can note things to write things out fully later. If you're recording your hearing, you can go back and listen to the recording for any questions and rationales you spoke out loud, but good notes can help and make the after process quicker.

For the two volunteers in the roles of Joey and Alex, please answer truthfully and to the best of your ability based on the information you have. If you do not know the answer, feel free to answer "I don't know."

For the two individuals in the roles of advisor. You are being provided with scripted questions, if at any point you are asked to reword or refrain from any questions, you have the liberty to reword or add questions.



Advanced Sexual Misconduct

General Information – for all participants

Joey has reported that Alex sexually assaulted Joey during the spring semester.

Undisputed facts

- Joey and Alex were in a relationship for six months that started after a hook-up initiated through a dating app.
- Joey and Alex engaged in regular sexual contact during their relationship.
- Sexual contact included penetration, fondling, kissing, and other “making out” type conduct.
- Joey and Alex definitively broke up in October. Joey shouted at Alex, “Thank God we are done. Don’t you ever touch me again.”
- In November, Joey and Alex had a conversation where they mutually agreed that the month apart from each other was helpful and that they could return to being friends.
- In January
 - Alex was out with friends and had three mixed drinks. The specific alcohol content of those drinks is unknown.
 - Text conversation on record
 - Alex “you up?”
 - Joey “yup, on Netflix binge”
 - Alex 🙄💧💧
 - Joey “you’re nasty”
 - Alex “you want company?”
 - Joey “sure”
 - Alex arrived at Joey’s residence. They sat on Joey’s couch together. The couch faces the TV in Joey’s living room and Netflix was playing.
 - Alex initiated contact with Joey, stroking Joey’s genitals.
 - Alex removed Joey’s shorts and underwear and made oral contact with Joey’s genitals.
 - Alex removed Alex’s pants and pushed Joey’s head towards Alex’s genitals. There was oral contact with Alex’s genitals.
 - Alex climaxed
- Afterward, both Joey and Alex put their clothes back on. Joey told Alex it was time for Alex to go. Alex left.
- Alex texted Joey when Alex got home and told Joey that Alex had had a nice time and was glad they were still friends. Joey did not respond.
- Joey spent 45 minutes in the shower and then headed to bed in tears.
- Text conversation record for the following day:
 - Joey “Why did you do that”
 - Alex “I just wanted to make you feel better.”
 - Joey “I told you before that I didn’t want to do that with you anymore”
 - Alex “I know, but we’re good, right?”
 - Joey “Damn it, Alex”



Advanced Sexual Misconduct

Joey Reports:

- Alex was drunk and aggressive.
- Joey pushed Alex away multiple times, but Alex persisted.
- Joey did not want sexual contact with Alex on the night in question.
- Joey told Alex that Alex needed to back off.

Alex Reports:

- The sexual contact was consensual



Advanced Sexual Misconduct

Joey – provide to a volunteer

During your relationship with Alex, you enjoyed engaging in sexual contact. You particularly enjoy orally stimulating partners and this was no different with Alex. You like being able to get Alex to respond and climax. The first time you learned about oral sex was when a tenth grader gave you attention when you were in 7th grade. The 10th grader told you that you would like it. It was okay, but then the 10th grader told you how good you were at it and that it made you really special. The 10th grader showered you with attention and you started to notice other people notice. It made you feel good to be seen and to make someone else feel good. You were cool because you had the attention of someone who was older.

When you and Alex started dating, Alex told you that Alex really enjoyed sex and liked making people feel good. When you wanted more of a relationship Alex told you that Alex couldn't limit themselves to one person sexually but could go all in emotionally. You felt a strong connection with Alex and so agreed to an open sexual relationship with the understanding that Alex would be safe and would make you number one. You never hooked up with anyone else while you were dating Alex as that wasn't your style and despite knowing Alex was having sex with other people you suspected Alex would be upset if you were with someone else.

After your breakup, you met someone and were casually dating. There was no commitment. You had not told Alex about this new person.

On the night of the incident you were home alone. You have a roommate, but they were still home after winter break. During the four hours prior to Alex's arrival, you had two glasses of wine and had taken some prescription medication for panic attacks (your time home over break was stressful and you had just gotten off the phone with your mother). You know that some anxiety medication in combination with alcohol can be a problem, though you have not had issues combining the two in the past. At the time of the incident you felt fully coherent and able to control yourself, other than when Alex forced themselves on you. You have a strong memory of the events.

When Alex asked if you wanted company, you really did want company. Alex was being ridiculous with their texts, but that's not super uncommon and you knew Alex was out with friends. Alex understands your relationship with your family and you felt it would be comforting to have Alex there with you. When Alex arrived you could smell the alcohol, which confirmed your suspicions about the ridiculous text message.

When Alex started getting handsy, you pushed Alex away. You did not want physical contact but felt comforted by Alex's presence on the couch with you and did not, initially, want Alex to leave. As Alex persisted, you told Alex to back off. Alex huffed, folded their arms, and rested their head on your shoulder, which you were fine with.

You began to doze off. You realized Alex was touching your genitals and tried to wiggle away. Alex aggressively yanked your shorts and underwear down, muttering that it would be easier if you would just lift your hips. You were shocked. Alex's mouth made contact with your genitals. You pushed Alex away, which is when you realized that at some point Alex must have pulled Alex's own pants and underwear off. Alex pushed your head towards Alex's genitals. You felt that Alex was becoming increasingly aggressive and maybe if Alex climaxed that maybe Alex would leave you alone.



Advanced Sexual Misconduct

After Alex climaxed, you got dressed and told Alex it was time for Alex to leave. You felt violated by someone you trusted. There were times when you were dating that you didn't really want to have sex with Alex and let it happen because that's what you do when you're in a relationship and figured Alex did that at times too. But this time, you weren't in a relationship, and you never imagined Alex would be that forceful when you weren't into it.

After Alex left you got in the shower hoping it would wash away what you were feeling. You then went to bed. When you woke up the next morning, you were still in disbelief about what Alex had done and wanted to know what Alex had been thinking. You did not feel you got an answer.



Advanced Sexual Misconduct

Alex – provide to a volunteer

After your breakup with Joey, you started hanging with JJ. You and JJ are not serious, it's all just benefits. Generally that's how you flow. No strings just good times. Joey knew this when you started dating and you had an open relationship that allowed you to engage with other people. You were always careful, because you didn't want to have to deal with the consequences and you had strong feelings for Joey and didn't want to bring something home.

On the night of the incident you were out with friends. You had three mixed drinks at a friend's place and didn't pay much attention to what was being poured. You felt good, but had control of yourself. You started thinking about Joey and realized Joey would be back in town after winter break. You know Joey has a hard time with Joey's family and figured you'd see what was up. When Joey let you know Netflix was on, you felt a little something as that was what was up on your first night together. You thought Joey was probably not in a good place and know that Joey usually feels better after some snuggling.

When you got to Joey's place, you sat in your standard place on Joey's couch. You could see Joey was down and wanted to make Joey feel good. You started touching stroking Joey's leg and Joey playfully batted you away, but was smiling and laughing. This kind of play wasn't uncommon when you were dating. At some point you got tired of the games and snuggled up next to Joey. You heard Joey take a deep sigh of contentment and knew it was go time and slipped off your pants – conveniently you were underwear free that night. You started by touching Joey's genitals. Joey made a pleasure noise. You pulled Joey's shorts and underwear down so that you could put your mouth on Joey, you know how much Joey likes that. Joey was being a bit lazy and wasn't helping much, but you could tell Joey was into it. When Joey pushed you away, you realized Joey wanted to pleasure you, so you guided Joey into position like you normally would.

It felt good as Joey's mouth and tongue always do, Joey brought you to an intense orgasm. After your orgasm, you got dressed and Joey was clearly tired and mentioned it was time for you to go. You got home and texted Joey that you really enjoyed the night. It had been so good to spend time with Joey again.

The next day Joey texted and asked why you did "that." You were a bit confused, but also know that Joey tends not to go back to old partners, because it makes things confusing. So you just let Joey know you were trying to make Joey feel good. After all, you weren't expecting anything, you were happy they were still friends. When Joey reminded you that Joey had said Joey didn't want to have sex anymore, you figured this was just a reminder that the two of you need to be more responsible and not slide back into something that hadn't been working. You knew Joey was annoyed, but were shocked when you found out Joey had filed some BS sexual assault complaint. You didn't do anything wrong and Joey was totally into it.



Advanced Sexual Misconduct


Complainant Advisor – Questions for Cross Examination – *Provide to facilitator or volunteer*

1. Isn't it actually you who is jealous of Joey's new relationship?
2. Didn't Joey explicitly tell you when you broke up that Joey did not want any further sexual contact with you?
3. Did Joey ever verbally tell you that Joey wanted to have sex with you?
4. Isn't it true that you will sleep with anything that breathes?
 - a. Did you not cheat on Joey multiple times throughout your relationship?
 - b. Didn't Joey express to you that Joey was concerned about what you might have picked up from other partners?
5. Why did you ignore all of the ways that Joey communicated that Joey didn't want to have sex: verbally when you broke up and nonverbally on the night in question?
6. Did you even consider asking Joey what Joey wanted?




Respondent Advisor – Questions for Cross Examination – *Provide to facilitator or volunteer*

1. On the date in question, isn't right that you drank alcohol and took prescription medication – a controlled substance?
 - a. If yes, you've been instructed by your doctor not to do that right?
2. Did you tell Alex that you were on drugs when you invited Alex over?
3. You and Alex have had sex many many times before, haven't you?
 - a. If yes, and haven't you, on many occasions taunted Alex because you like being pursued?
 - i. If no, oh, so you taunt Alex because you derive joy in making Alex uncomfortable?
 1. If no, well then why would you pretend like you want sex but then say that you don't, but then claim later that everything was consensual? Seems like you just want attention and like to mess with other people's heads.
4. You didn't tell Alex that you had taken your anxiety medication, you have a history of being a tease in your sexual interactions with Alex, so this is no different than any of the many many sexual encounters you've had in the past with Alex that you claim were consensual.
5. Alex made it clear in the text message that there was interest in sexual contact, why did you invite Alex to your place if you didn't want to have sex?
6. When you and Alex were on the couch together, did not the progression of contact align with the sexual encounters you've had with Alex many many times previously?
7. If you're trying to claim you were unable to consent, how is it that you think Alex was supposed to know that?
8. Isn't it true that you actively engaged in oral stimulation of Alex?
9. Isn't it true that you have told Alex that you enjoy orally stimulating your partners and that you started this behavior when you were in the 7th grade?
10. Weren't you depressed the night of the incident?
11. Didn't you just want to feel better?
12. Hasn't Alex made you feel good in the past with physical contact?
13. Why did you just walk away and tell Alex to leave?
14. You said Alex was forceful, why don't you have any bruises?
15. Aren't you just making this up because you are jealous of Alex's new relationship with JJ and you want to hurt Alex?



Sexual Harassment: Including and Beyond Title IX

Brandon D. Williams, MPA




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Chat Monitor

Mikiba



Learning Outcomes


1. Participants will be able to better define Sexual Harassment;
2. Participants will have a better understanding of the history of Sexual Harassment; and
3. Participants will have a better understanding of how to investigate Sexual Harassment.



What is Sexual Harassment?

- Broadly speaking:
 - Form of Sex Discrimination.
 - May take place in situation where there is a power differential.
 - Includes:
 - Sexual advances
 - Requests for sexual favors
 - Verbal or physical behavior of a sexual nature


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The creation of the Term “Sexual Harassment”

- Grew from a “consciousness-raising” session professor Lin Farley held in 1974 as part of a Cornell University course on women and work.
 - All the female students were asked about experiences at work. 100% of them had at some time been fired or quit due to sexual harassment in the workplace.
- Catharine MacKinnon’s analysis in the book, *Sexual Harassment of Working Women* (1976).

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Case Law

- Title VII of the Civil Rights Act of 1964 (sex is a protected class).
 - Sex was added by Howard Smith, a Democrat from VA.
 - “I presume that if there had been any necessity to point out that women were a second-class sex,” she said, “the laughter would have proved it.” – Margaret Griffiths, Democrat from MI.

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Case Law

President Lyndon Johnson signing the Civil Rights Act into law.



Credit Wikimedia Commons



Case Law

- Title VI (1964)
 - Passed to prohibit discrimination in federally funded private and public entities.
 - It included race, color, and national origin.
- Title IX of the Education Amendments Act of 1972
 - Passed into law by President Richard Nixon.
 - *“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”*

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Case Law

- Alexander v. Yale (1980)
 - Argued sexual harassment was sex discrimination.
- Late 1980s
 - The Supreme Court interpreted Title VII of the Civil Rights Act of 1964 to include discrimination based on “sex” as sexual harassment in the work place.

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Case Law

- Meritor Savings Bank v. Vinson (1986)
 - Mechelle Vinson is terminated from her position at the bank.
 - Vinson sues Sidney Taylor, the Vice-President of the bank claiming that for four years Taylor subjected her to sexual harassment by creating a “hostile work environment”.
 - Vinson claimed that Taylor coerced her into having sex with him. Vinson said she had sex with Taylor “40 or 50 times”, he exposed himself to her, touched her in public, and raped her multiple times.

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Case Law

- Meritor Savings Bank v. Vinson (1986)
 - This court case articulated that the creation of a hostile work environment is a form of discrimination.
 - Court ruled that the sexual conduct between Taylor and Vinson could not be consensual due to the power differential between a supervisor and a subordinate in the workplace.
 - Does your school have a policy on intimate relationships? What is it? Who investigates it?

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Case Law

- **Davis v. Monroe (1999)**
 - School boards are liable when officials are deliberately indifferent to sexual harassment, of which they have actual knowledge, that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.
- **Civil Rights Act of 1964 (June 15, 2020)**
 - Supreme Court ruled that the Act, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity.
 - “An employer who fires an individual merely for being gay or transgender defies the law”, Justice Neil M. Gorsuch. Gorsuch wrote for the majority in the 6 to 3 ruling.

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Sexual Harassment (Defined by the Regs)

- “Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:
 - (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or
 - (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).”

(Pages 2014 – 2015 of the federal regulations for Title IX)



Mandatory Response Obligations

Schools must respond to harassment allegations promptly and in a manner that is not deliberately indifferent. Mandatory response obligations include:

1. Promptly offering supportive measures to the Complainant.
2. Must avoid imposing disciplinary sanctions against a respondent without following the § 106.45 grievance process.
3. § 106.44(b)(1) requires a recipient to investigate sexual harassment allegations made in a formal complaint.
4. § 106.45 prescribes specific procedural protections for complainants, and respondents, when a recipient investigates and adjudicates formal complaints

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-reg- unofficial.pdf>
(Footnote 934, Page 675)



Quid Pro Quo (Defined by the Regs)

- Latin phrase meaning “this for that.”
- “An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.”
 - Raise/promotion for sexual favors
 - Better grade if you go on a date with the professor

(Page 2014 of the federal regulations for Title IX)



<https://arnoldzwick.org/2017/05/20/squid-pro-quo/>



Hostile Environment (Defined by the Regs)

- “Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”
- How do you define “reasonable person”?
 - Reasonable person means a reasonable person under similar circumstances and with similar identities...
- “Severe, pervasive, and objectively offensive” instead of “Severe, pervasive, or objectively offensive.”

(Page 2014 of the federal regulations for Title IX)



Sexual Assault (Defined by the Regs)

- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)"
- 20 U.S.C. 1092(f)(6)(A)(v), "means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation."

(Page 2015 of the federal regulations for Title IX)
(20 U.S.C. 1092 (f)(6)(A)(v))



Stalking (Defined by the Regs)

- "Stalking" as defined in 34 U.S.C. 12291(a)(30)."
- 34 U.S.C. 12291(a)(30), "The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - (A) fear for his or her safety or the safety of others; or
 - (B) suffer substantial emotional distress."

(Page 2015 of the federal regulations for Title IX)
(34 U.S.C. 12291 (a)(30))



Dating and Domestic Violence (Defined by the Regs)

- "Dating Violence" as defined in 34 U.S.C. 12291(a)(10),
- "Domestic Violence" as defined in 34 U.S.C. 12291(a)(8)
- This will be covered in more in depth later in the week during the presentation on dating and domestic violence.

(Page 2015 of the federal regulations for Title IX)



Issues that lead to Hostile Environment

- Power dynamics
 - Person in power vs. person who is not
- Greek Life
- Band
- Sports
- Lack of self-awareness
 - Comments
 - Jokes

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Sexism

What is sexism?

1. Belief that one sex (usually male) is superior to another sex (usually female).
2. Behavior, conditions, or attitudes that foster stereotypes of social roles based on sex.

(Defined by Merriam Webster Dictionary)



Examples of Sexism (Title VII)

1. Unsolicited comments, typically of a sexual nature, about one's body.
2. Being seen as the "office servant"
 - Getting drinks
 - Planning activities such as office birthdays
 - Making copies
3. Nicknames:
 - Honey
 - Sweetie
 - Sugar
4. Double Standards:
 - Women are "pushy" while men are "go-getters"
5. Being asked about marriage and children when men are not

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Examples of Sexism (Title IX)

1. Name calling:

- Beer bitch
- Chip bitch

2. Bros and hoes parties

3. Objectification of women's bodies

"You don't belong out here," Accorsi screamed at Derick (Ringo) Adamson, head coach of the women's track-and-field team, according to Adamson. "You were told you don't belong out here when we're out here." How was Accorsi supposed to get 18-year-old boys to concentrate on X's and O's, he said, when their eyes were "going back and forth" at the sight of "girls running out here with sports bras." Adamson would later recount in a written statement to university officials. (Quoted from the Chronicle's March 21, 2019 article entitled, "Sport-Bra Outrage And a Fight Over Everyday Sexism")

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Sexism vs. Sexual Harassment

Is sexism a form of sexual harassment?

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Title IX intersecting with Title VII

- May not always use Title IX.
 - Title VII
 - Consider the status of the Complainant and Respondent – Employee vs. employee, Employee vs. student, etc.
 - Title VII policy provides more freedom.

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Challenges in Investigations

- Power Dynamics
 - Role of Complainant
 - Role of Respondent
- Credibility
 - Any witnesses?
 - Their relationship to the person
 - Any evidence?
- Reluctant Parties
- Retaliation

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Consensual Relationships

- Does your institution have an amorous relationships policy?
 - How do you define it?
 - Who investigates it?
 - Appeals?
- Politics surrounding this policy.
- How wide-sweeping is the policy?
- How do you assess power-relationships with your staff?
- How do you assess whether it is truly consensual?

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Thank you for attending.

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Informal Resolution

Mikiba W. Morehead

July 20, 2020




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Chat Monitor

Kristen




Learning Outcomes

- Participants will be aware of various informal resolution/alternative dispute options.
- Participants will be able to determine the appropriate resolution option.
- Participants will be aware of strategies for implementation.




Agenda

- Informal resolution highlights from the 2020 regs.
- Alternative dispute recommendations for informal resolution processes.
- Suggestions for implementation.



Informal Resolution Under New Regulations

Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the voluntary, written consent of both parties; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student.



Informal Resolution Highlights

- Must identify persons designated to facilitate informal resolution processes.
- Informal resolution processes must be reasonably prompt.
- Informal resolution processes should be included with notice of allegations.
- Informal resolution processes must be voluntary and can only be offered if a formal complaint is filed.
- Must keep records regarding the facilitation of an informal resolution process.



Alternative Dispute Resolution (ADR)

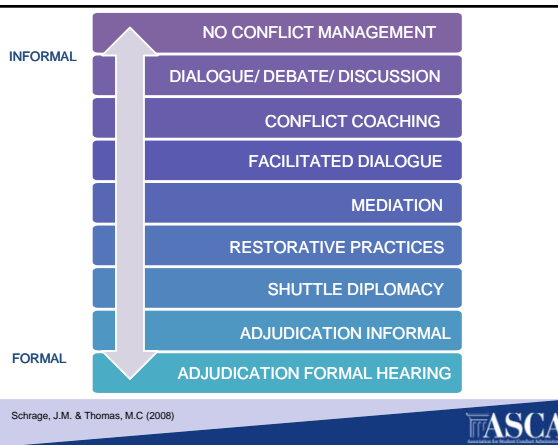


Alternative Dispute Resolution

Philosophy of conflict resolution that uses Restorative Justice and Social Justice principals to resolve interpersonal conflict.

- Complainant options
- Respondent accountability
- Community opportunities and protection
- Community accountability
- Competency development

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Schrage, J.M. & Thomas, M.C (2008)



ADR Recommendations for Informal Resolution

- Mediation
- Restorative Practices
- Shuttle Diplomacy
- Adjudication Informal

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Mediation

Complainant and respondent access administration to serve as a third-party to coordinate a structured session aimed at resolving a conflict and/or constructing a go-forward or future state for the parties involved.

- Achieve reconciliation
- Find settlement or agreement
- Reach understanding

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Tenets of Mediation

1. Neutrality
2. Confidentiality
3. Authority
4. Autonomy

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Mediation Models

- Pure Form Mediation
- Caucus Mediation (Shuttle Diplomacy)
- Transformative Mediation
- Peacemaker Mediation
- Narrative Mediation
- Therapeutic Mediation

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Restorative Practices

Administration provides space and facilitation for respondents taking ownership for harmful behavior and parties affected by the behavior to jointly repair harm.

- Focused on restoration
- Earning trust
- Building community

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Principals of Restorative Practices

1. Accessible to the community.
2. Encourage active participation of community members.
3. Accountability measures (sanctions) should focus on repairing harm.
4. Earnest reintegration of respondents into the community.

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Restorative Practice Models

- Mediation
- Conferencing
- Circles
- Boards

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Shuttle Diplomacy

Administration actively negotiates an agreement between two parties that do not wish to directly engage with one another.

- A form of mediation
- Private spaces for complainant and respondent
- Focused on reaching resolution.

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Adjudication Informal

Using the process outlined in campus policy, administration meets with the parties to resolve an incident. Resolution is achieved when the parties accept an agreed upon outcome.

- Administrative decision

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Recordkeeping

- Mediation
- Restorative practices
- Shuttle Diplomacy
- Adjudication Informal

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Remember

- The 2001 Guidance discourages schools from using mediation (or other informal resolution) to resolve sexual assault allegations.
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student.
- Informal resolution processes are not a shortcut to resolution.

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Questions



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Thank you for attending.

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Hearing Components and Strategies

Dr. Kristen Harrell



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Chat Monitor

Brandon



Learning Outcomes

1. Participants will be aware of multiple hearing structures
2. Participants will have baseline knowledge to create structure of their own


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Notice of Investigation – TIX Requires

- Grievance process in compliance with TIX
- Informal resolution process
- Allegations of sexual harassment
 - Sufficient detail to prepare if known
 - Identities of parties
 - Date, time, location of incident
- Statement that respondent is presumed not responsible
- Allowed advisor of choice who may be an attorney
- Provision in code prohibiting false statements
- Additional notice if allegations added

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Investigations

What do you have to work leading up to the hearing?

- Wording of allegations
- Thoroughness
- Logic
- Readability
- Formatting
- Evidence

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Notice of Hearing Date

- The hearing notice should not include new allegations of sexual harassment not already included in investigation notices!
- Hearing date: >10 days after final investigation given to parties & advisors
- Deadlines on submitting information
- How do you provide notice
 - How do you know it was received?
 - What if a letter wasn't retrieved? How do you ensure notice?
 - What if people are ghosting you?
 - Ensuring you have engaged in due diligence

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Pre-Hearing Meetings - Who

- Providing Information
 - Chairperson
 - Individual Decision Maker
 - Other
- Receiving Information
 - Parties
 - Advisors
 - Witnesses

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Pre-Hearing Meetings - What

- Review allegations
- Explain hearing process (even if already explained prior to investigation)
- Provide general flow of the hearing
 - Be careful about binding yourself, allow for some flexibility
- Explain physical configuration and related participation options
 - In person (have a diagram and/or show the actual space)
 - Zoom
- Provide information about training and status of decision makers and chairperson as applicable
 - Faculty, staff, and/or student? External contracted entity?

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Pre-Hearing Meetings – What Continued

- Discuss roles of:
 - Decision maker (individual or panel)
 - Chairperson (if applicable)
 - Parties
 - Advisors
 - Scope
 - Cross Examination
 - Limitations
 - University provided advisors
 - Witnesses
 - First Hand
 - Character
 - Expert (if allowed)

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Pre-Hearing Meetings - What Continued

- Explain cross-examination
 - Failure to submit to cross-examination means their statement must not be considered in the decision
 - Prohibition on questions regarding sexual history
 - Pausing for decision-maker relevancy determinations
- Explain standard of evidence used
- Remind of obligation to be truthful
- Re-iterate deadlines for submission of additional evidence
- Discuss impact statements
- Explain appeal options
- Have parties acknowledge in writing receipt of each piece of information covered

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Pre-Hearing Meetings - When

- Things to consider
 - 10 day review period prior to hearing
 - Opportunities to submit
 - Additional information
 - Character Witness Information
 - Class/work schedules
 - Equity between parties

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Decision Maker - Individual

Pros	Cons
Easier scheduling	A lot of responsibility
Clear who makes rationale determinations, writes outcome, etc.	Juggling multiple parties, advisors, witnesses (may need assistance)
Easier for institutions with limited human resources	Greater impact of bias if present
Less individuals to train & tracking training easier	

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Decision Maker - Panel

Pros	Cons
More perspectives – helps with reducing impact of bias and cultural and sexual context	More challenging to schedule
Spread responsibility for outcome	More training needed & more training to track
	Requires designation of clear roles: relevancy determinations, outcome letters
	Difficult with limited human resources

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Decision Maker – Panel Considerations

- Chairperson
- Who and how many panel members
 - Students, faculty, staff
- Setting expectations
 - Ability to remove problematic panel members
- Consensus v. majority
 - Facts, violation, sanctions

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Decision Maker - Training

According to the regulation (34 CFR 106.45(b)(1)(iii)) training must include:

- The definition of sexual harassment
- The scope of the recipient’s education program or activity
- How to conduct a hearing
- How to serve impartially, including by avoiding prejudgment of the facts at issues, conflicts of interest, and bias
- Technology used in hearings
- Issues of relevance of questions and evidence
 - including when sexual history is applicable

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Advisors

- Setting expectations
 - External advisors
 - University provided advisors
- Scheduling hearings
- Removing an advisor
 - Rescheduling
- Non-disclosure agreement (unofficial copy of the reg, p. 994)

Brief Small Group Discussion

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Witnesses

- Coordination
 - Presence of statement in investigation, implied must also include in hearing
- Fact
- Hearsay
 - Immediate Outcry
 - Medical Professionals
 - Law Enforcement
 - Other
- Character
- Investigator(s)

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Cross Examination

- Relevancy Determinations
 - Previous sexual history
 - Prejudicial information
- Aggressive/hostile advisors
- Consistency between parties

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Physical Space

- Same room
- Separate rooms
- Virtual
 - Federal government required continuation of cases – virtual acceptable
 - Doe v. Transylvania University
 - Video conference counts as "live"
 - Doe v. Oberlin College

Know your technology!

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Outcomes

Simultaneous Written Notification Must Include:

- Allegations
- Procedures to date
- Findings of fact supporting decision
- Conclusions regarding code
- Rationale for the decision on each allegation
- Sanctions and sanction rationales
- Whether remedies designed to restore access to the complainant will be provided
- Appeal procedures

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Appeal Basis

- A procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- Other

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Appeals

- Written only
 - Need response protocol
- In person
 - Individual
 - Panel

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Thank you for attending.

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Determining Relevancy

Alyssa M. Leffall, JD

July 21, 2020



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Chat Monitor

Mikiba




Learning Outcomes

1. Participants will understand factors to consider regarding relevancy.
2. Participants will be able to provide rationales for disallowing questions.



Caveat

- As an advanced track, relevancy content will focus on the requirements of the new regulations and special issues.
- We will briefly discuss some foundational aspects of the topic, but will not go in depth. To further explore the building blocks of managing Title IX cases, we encourage you to attend ASCA's Sexual Misconduct Institute this fall.



Roadmap

1. Big picture implications
2. TIX requirements + what remains unclear
3. Practitioner's tips & considerations

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Big Picture Implications

- Except in VERY limited circumstances, all relevant evidence will be allowed to become a part of the record.
- Decision-maker is still responsible for weighing each piece of relevant evidence and testimony and assessing its credibility.

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Relevancy (General) – TIX Requirements

- Requires objective evaluation of all relevant evidence – including **inculpatory & exculpatory** evidence.
 - “All” relevant evidence
 - Regulation commentary: Does not permit endless delay or require that parties or institution perform an exhaustive search for all evidence related to the case.
 - It is what a thorough investigation effort can gather within a reasonably prompt time frame.
 - Does not require “objective” (i.e. corroborating) evidence to substantiate parties’ or witnesses’ statements – must objectively evaluate the weight and credibility of all the relevant evidence that is available (85 Fed. Reg. 97, commentary, 2020).
- Credibility determinations cannot be based on status as a complainant, respondent, or witness.

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Standard for Relevance – TIX Requirements

- Regulations do not define relevance– “the ordinary meaning of the word should be understood and applied.” (85 Fed. Reg. 97, commentary FN 1018, p. 30247, 2020).
- Sample definitions/framework
 - **Relevance** – The fact, quality, or state of being relevant; relation or pertinence to the issue at hand (Black’s Law Dictionary, 2004).
 - **Relevant** – Logically connected and tending to prove or disprove a matter in issue; having appreciable probative value – that is, rationally tending to persuade people of the probability or possibility of some alleged fact (Black’s Law Dictionary, 2004).

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Standard for Relevance – TIX Requirements

Sample framework (two-part test)

1. The information is directed to some fact that is important to the issues in the case. This is largely driven by the allegations.
2. The information tends to make the existence of a fact more or less probable. This is viewed in totality of the circumstances and takes into consideration logic, experience, and the ways of human behavior (Mauet, 2020).



Standard for Relevance – TIX Requirements

- Specific evidentiary rules or standards regarding admissibility have not been adopted.
 - Does not adopt the Federal Rules of Evidence (FRE) or another set of evidentiary rules.
 - Does incorporate some concepts that are included in the FRE.
- However, there is a clear focus on requiring that all relevant evidence be considered, absent a few limited exceptions.

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Excluding Relevant Evidence for Policy Reasons

- No required evidentiary standard, but if one is adopted, it “must respect the relevance standard” (85 Fed. Reg. 97, commentary, p. 30248, 2020).
 - Meaning, an institution CANNOT adopt a rule excluding relevant evidence because it
 - may be unduly prejudicial,
 - concern prior bad acts, or
 - constitute character evidence. (85 C.F.R. 97, p. 30248)
 - This may differ from some institutions’ current practice.

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Excluding Relevant Evidence for Policy Reasons

- Rape shield protection
 - Complainant's prior sexual history is deemed irrelevant EXCEPT
 1. If offered to prove that someone other than respondent committed the alleged conduct
- OR
- 2. If related to specific instances of complainant's prior sexual behavior with respondent and offered to prove consent.

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Excluding Relevant Evidence for Policy Reasons

- Legally recognized privilege exists
 - Cannot "require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, UNLESS (emphasis added) the person holding such privilege has waived the privilege" (85 Fed. Reg. 97, p. 30576, 2020).
 - Commonly recognized privileges*
 - Attorney-client privilege
 - Marital privilege
 - Religious privilege
 - Doctor-patient privilege
 - Counseling and psychological privilege
 - Accountant-client privilege

*In most states, the exact scope of the privileges and any exceptions are defined by statute, so please review the laws of your state and/or confer with your institution's general counsel regarding scope and applicability.

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Excluding Relevant Evidence for Policy Reasons

- A party's medical or psychological treatment records cannot be used without their voluntary, written consent.
- Statements not subject to cross-examination in post-secondary institutions cannot be relied on by the decision-maker(s).
- Duplicative evidence can be excluded (85 Fed. Reg. 97, commentary, p. 30377, 2020). (CAVEAT)

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Excluding Cross-Examination Questions

- Only relevant questions may be asked.
- Before answer is provided, the decision maker must:
 1. determine whether the question is relevant **AND**
 2. explain any decision to exclude a question as not relevant.
- Prepare for:
 - Real-time challenges
 - Hostile advisors and/or parties

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Excluding Cross-Examination Questions

- If questions or evidence is relevant, but concerns a party's character or prior bad acts, the decision maker(s) **cannot exclude or refuse to consider the relevant evidence** (85 Fed. Reg. 97, 2020).
 - Evaluate evidence for weight and credibility
 - Treat parties equally in evaluation of character evidence

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Excluding Cross-Examination Questions

- **Setting expectations** – Regulations allow for adoption of codes of conduct and rules of decorum for parties, advisors, and witnesses.

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Relevancy Group Discussion



Evaluating Weight & Credibility of Relevant Evidence

- Decision-maker should weigh each piece of relevant evidence and testimony and assess its credibility.
- §106.45(b)(1)(iii): Flexibility is allowed in type and scope of training on assigning weight or credibility to certain types of evidence.
 - Training should promote impartiality and treat complainants and respondents equally.
- §106.44(b)(2): When enforcing regulations, DOE will refrain from second guessing a determination of responsibility based solely on whether DOE would have weighed the evidence differently.

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Evaluating Weight & Credibility of Relevant Evidence

- Common types of evidence
 - Witness testimony
 - Lay witnesses
 - Expert witnesses
 - Character witnesses
 - Considerations for certain types of hearsay
 - Documents
 - Drawings
 - Printouts of phone screenshots, emails, social media direct messages
 - Medical records (remember voluntary, written consent requirement)

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Evaluating Weight & Credibility of Relevant Evidence

- Common types of evidence, cont'd
 - Photos/videos
 - Physical evidence
 - Replicas/models
- Authentication considerations

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Drafting Rationales for Conclusions

- A written determination regarding responsibility is required.
- Must lay out the evidentiary basis for conclusions reached in the case (i.e. show your work).
 - Could someone clearly identify how and why decisions were made?

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What's Still Unclear?



Resources

Black's Law Dictionary (8th ed. 2004).

Graham, M. H. (2020). Handbook of Federal Evidence (8th ed.). Thomson Reuters Westlaw.

Mauet, T. A., & Wolfson, W. D. (2020). *Trial Evidence* (7th ed.). Wolters Kluwer.

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 97 (May 19, 2020) (to be codified at 34 C.F.R. pt. 106).



Thank you for attending.

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Identities and Intersectionality

Dr. Kristen Harrell
Mikiba Morehead

July 23, 2020




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Chat Monitor


Brandon



Learning Outcome

- Participants will be able to identify varying identities and how those identities may interact with sexual misconduct resolution processes
- Participants will be able to apply their understanding of identities to advocate for inclusive policies and practice
- Participants will be able to critically analyze their training and response


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Box Exercise

- Victim
- Offender


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Based on the Oakland Men's Project Man Box Exercise

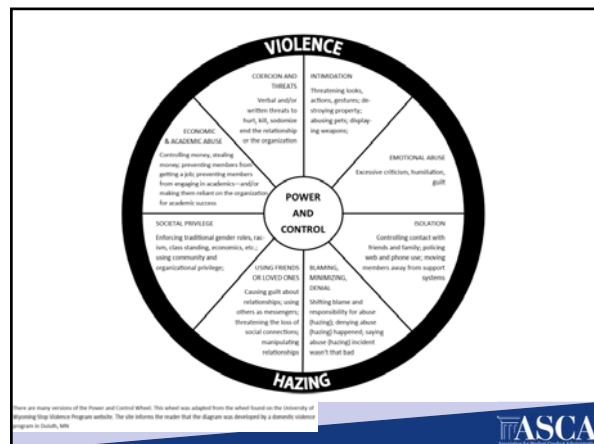
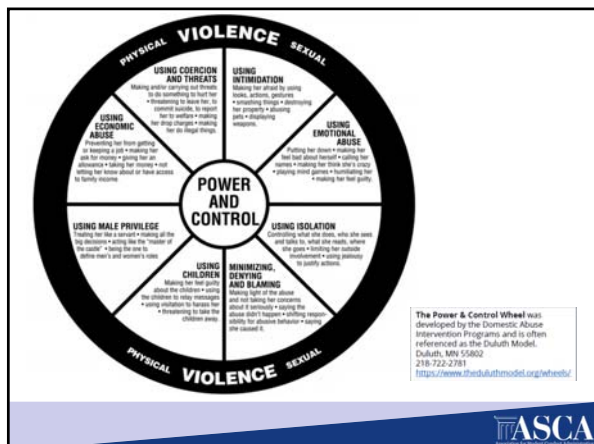


Identities and the Parties

- Dehumanization
 - Objectification
 - Fetishization
 - Language
- Power and Control

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Identity Considerations

Brainstorm

What other identities may be salient?

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Identity Considerations

Breakout Groups
(20 minutes)

Pick two (2) identities

Pick three (3) questions

Answer the two (2) questions in the context of the identities you have chosen

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Identities Considerations

Large Group

Any significant thoughts for the larger group?

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Implicit Bias

- Which ones did you take?
- How did you feel about your results?
- How might this impact your engagement with parties?

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Personal Reflection

- What are your visible identities?
- How does your physical/virtual work environment present?
- What kind of interactions/reputation do you have on campus?
- Are there cultural references you utilize in your work?
 - What are they?

(10 minutes)

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Small Group Processing


Independent Learning Groups

Discuss items that you reflected on
(15 minutes)

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Break
 10 Minutes



Mindfulness Exercise

Emotion Identification

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Challenges for Us

- Savior Complex
- Perceptions of Power and Control
- Trust in process

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What to Do About It

- Transparency
- Creating inclusive physical/virtual environments
- Showing up and building a positive reputation
- Check your cultural references
- Know your resources
- Representation without tokenization
- Self and staff care
- When to say no

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Policy, Communication, Files, and Databases

- Inclusive language
 - De-gendered
 - Pronouns
 - Preferred names
- Cultural frameworks

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Identities Case Study

Breakout Groups

Read case study and discuss questions
(20 Minutes)

Large Group Process

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Group Processing

- Take-aways from the case study
- Lingering questions

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Dating and Domestic Violence

Brandon D. Williams, MPA




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Chat Monitor

Kristen



Learning Outcomes


1. Participants will be aware of the complexity of dating and domestic violence.
2. Participants will be aware of the complexity of sanctioning dating and domestic violence.



Dating and Domestic Violence

- State Laws
 - Consider additional reporting obligations
- Dating and Domestic Violence is about one person trying to gain or maintain power and control in a relationship over the other person.
- Dating and Domestic Violence during a pandemic.

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Dating Violence (Defined by Regs)

"Dating violence" as defined in 34 U.S.C. 12291(a)(10)


The term "[dating violence](#)" means violence committed by a person:

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

(Page 2015 of the federal regulations for Title IX)
(34 US Code 12291(A)(10))




Domestic Violence (Defined by the Regs)

Includes felony or misdemeanor crimes of violence committed by:

1. A person who is a current or former spouse or intimate partner with a second person;
2. A person with whom a second person shares a child in common;
3. A person who is cohabitating with or who has cohabitated with a second person as a spouse or intimate partner; or
4. Any other person against a second person who is protected from that person's acts under the domestic or family violence laws where the violence occurred.

(Page 2015 of the federal regulations for Title IX)
(U.S. Code 12291(A)(8))




Dating Violence in an Electronic Age

Love Bombing

- The practice of overwhelming someone with signs of adoration and attention.
 - Gifts
 - Flowers
 - Candy
 - Flattery
- It's about manipulation
- Narcissists

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Dating Violence in an Electronic Age

Sexting

- Sending and receiving sexual messages through technology such as a phone, app, email, or webcam.
- 2018 survey by JAMA Pediatrics (12 – 17 year olds) found that:
 - 15% had sent sexts.
 - 27% have received a sext.
 - 12% sent a sext without consent
 - 8% received a sext without consent.

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Dating Violence in an Electronic Age

Revenge Porn

- Sharing of private, sexual materials, either photos or videos, of another person without their consent.
 - Sent to friends
 - Uploaded to websites
- Michael Pratt – Founder of the pornographic website, GirlsDoPorn.
- Revenge porn is cyber sexual harassment (or sexual exploitation).
- Most states have revenge porn laws.

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Dating Violence in an Electronic Age

Checking In


- Checking in or Checking up?
 - Where are you?
 - Who are you with?
 - Why haven't you texted back?
- Relationships are built on trust.
- Checking your phone, iPad, email, social media.
- Reading your text messages

When you ask how her day went but you already know how her day went



<https://www.aintrest.com/post/269723465170835145/>

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Texting



Hatch 2017





Beyond Physical Abuse

Emotional Abuse

- Undermining another person's feelings of self-worth and independence.
- What it is:
 - Constant criticism
 - Putting someone down in front of others and privately
 - Gaslighting
 - Name calling
 - Double standards
 - Blaming others for your unhappiness

(Center for Disease Control)

Beyond Physical Abuse

Emotional Abuse

- What it isn't:
 - Breaking up with a partner**
 - Arguing with your partner**
 - Getting your feelings hurt
 - Being honest – even blunt
 - Yelling**
- ** Let's talk...


(Center for Disease Control)

Beyond Physical Abuse

Sexual Abuse

- If you love me (manipulation/emotional abuse) then...
 - Sex in public
 - Activities you are not comfortable with
- Those who experience physical and sexual abuse are more likely to be injured or killed compared to those who experience one form of abuse.
- Mental health issues.

(National Coalition Against Dating Violence)




Beyond Physical Abuse

Financial Abuse


- Controlling a Complainant's ability to acquire, use, and maintain financial resources.
 - Survey by the Centers for Financial Security found that 99% of domestic violence cases also involved financial abuse.
- Examples:
 - Prevented from working
 - Lack of access to money
 - Having to account for every penny

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Beyond Physical Abuse

- Impact of financial abuse:
 - Powerful method of keeping someone trapped in an abusive relationship.
 - No access to money or resources (credit cards) – difficult to safety plan.
 - Undermines their self worth and feelings of adequacy.
 - Ruined (or no) credit.



<https://www.relativemag.com/2018/06/15/how-to-keep-a-computer-from-being-taken-away-all/>

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Beyond Physical Abuse

Isolation

- Provides the abuser with greater control in the relationship.
- How is it done?
 - Starts subtle
 - Starts by "checking in"
 - Gets the person to quit activities
 - Cuts them off from friends and family

(The National Voice of Domestic Violence)



Impact of Dating/Domestic Violence

- Loss of confidence
- Inability to process/express emotions
- Physical injury
- Mental health issues
- Suicide
- Self harming behaviors
- Dropping out of school
- Doing poorly academically


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Clery

- Make sure you are reporting these matters to your Clery Coordinator.
- How do you report them?
- Do you have/attend Clery meetings?

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Narcissists

- Narcissism, as defined by the Mayo Clinic, is a mental condition in which people have an inflated sense of their own importance, a deep need for excessive attention and admiration, troubled relationships, and a lack of empathy for others.
- Theodore Millon's 4 Types of narcissists:
 1. Unprincipled narcissist: Fraudulent, amoral, disloyal – a charlatan.
 2. Amorous narcissist: Clever, charming, pathological liar – Casanova.
 3. Compensatory narcissist: Passive aggressive, illusions of being superior.
 4. Elitist narcissist: Feels privileged and empowered by virtue of special childhood status.

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Veil of Perfection

- The veil of perfection:
 - Perfect life
 - Perfect/specific image
- When the image of the perfect life is more important than the life you are living.



<https://www.anywhere.com/blog/beaches/>

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Grooming Allies

- Narcissists allies
 - Fan club
 - Abuse through proxy
 - Witnesses for hearings



https://villains.fandom.com/wiki/Flying_Monkeys

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Sanctioning a Narcissist

- You control the meeting.
- Keep the focus on their behavior.
- Remember, sanction the behavior, not the person.

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Sanctioning a Narcissist

- Sanctioning Dating and Domestic Violence
 - Are you sanctioning for liability purposes?
 - Are you sanctioning in an educational purpose?
- How do you sanction an abusive person to not be an abuser?
 - Can you sanction a person that way?

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References

34 US Code 12291(A)(10)

Hatch, J. (2017). Woman shares eye-opening text convo to show what everyday abuse can look like.

Huffpost. Retrieved from https://www.huffpost.com/entry/woman-shares-eye-opening-text-convo-to-show-what-everyday-abuse-can-look-like_n_590b215ae4b02655f844b7bc

U.S. Code 12291(A)(8)






Thank you for attending.

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Burnout, Mindfulness & Self-Care

Mikiba W. Morehead

July 24, 2020




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Chat Monitor

Kristen



Learning Outcomes


- Participants will be aware of secondary trauma stress conditions.
- Participants will be able to assess the presence of secondary trauma stress symptoms.
- Participants will be aware of self-care techniques.

Trauma-Sensitive Schools
TRAINING PACKAGE
UNDERSTAND • BUILD • LEAD

Building Trauma-Sensitive Schools
Handout Packet


The content for the following four slides regarding Secondary Trauma Stress (STS) comes from this package.



Secondary Trauma Stress (STS)

The emotional distress that results when an individual hears about the traumatic experiences of another individual.

- Burnout
- Compassion fatigue
- Vicarious trauma



STS Symptoms

- Increased anxiety and concern about safety.
- Intrusive, negative thoughts and images related to student's traumatic stories.
- Fatigue and physical complaints.
- Feeling numb or detached from students.



STS Symptoms

- Feeling powerless or hopeless about students and the work.
- Diminished concentration and difficulty with decision making.
- Desire to physically or emotionally withdraw from people or situations that trigger difficult thoughts and emotions.



Warning Signs of STS and Burnout

Hypervigilance	Excessive alertness for potential threats or dangers at and outside of work. Always being "on" or "on the lookout".
Poor Boundaries	Lacking a balanced sense of your role so that you take on too much, step in and try to control events, have difficulty leaving work at work, or take the work too personally.
Avoidance	Coping with stress by shutting down and disconnecting.
Inability to Empathize/Numbing	Unable to remain emotionally connected to the work.
Addictions	Attaching to distractions to check out from work, personal life, or both.
Chronic Exhaustion/ Physical Ailments	Experiencing physical, emotional, and spiritual fatigue or inexplicable aches and pains exceeding what you expect from an ordinary busy day at work.
Minimizing	Trivializing a current experience by comparing it with another situation that we regard as more severe.
Anger and Cynicism	Using cynicism or anger to cope with other intense feelings that we may not understand or know how to manage.
Feelings of Professional Inadequacy	Becoming increasingly unsure of yourself professionally, second-guessing yourself, feeling insecure about tasks that you once felt confident to perform.

Mindfulness & Self-Care



Mindfulness is the basic human ability to be fully present, aware of where we are and what we're doing, and not overly reactive or overwhelmed by what's going on around us.

<https://www.mindful.org> (2020)



Mindfulness & Self-Care

- Self awareness
- Self permission
- Self-care assessments
- Meditation
- Breathing exercises
- Body scans

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References

- Guarino, K. & Chagnon, E. (2018). *Trauma-sensitive schools training package*. Washington, DC: National Center on Safe Supportive Learning Environments.
- Mindful. (n.d.). *Getting started with mindfulness*. <https://www.mindful.org/meditation/mindfulness-getting-started/>



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